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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE STANLEY BLUMENFELD, JR., U.S. DISTRICT JUDGE

SANTA CLARITA VALLEY WATER AGENCY,)
)
Plaintiff,)
)
v.) Case No.
) CV 18-6825 SB (RAOx)
WHITTAKER CORPORATION, et al.,)
) Volume 2
Defendants.) (Pages 123 - 219)
)
_____)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS
TRIAL DAY 1: P.M. SESSION
WEDNESDAY, NOVEMBER 17, 2021
1:41 P.M.
LOS ANGELES, CALIFORNIA

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1 WEDNESDAY, NOVEMBER 17, 2021; 1:41 P.M.

2 LOS ANGELES, CALIFORNIA

3 -oOo-

4 (In the presence of the jury:)

01:41PM

5 THE COURT: On the record in Santa Clarita Valley
6 Water Agency versus Whittaker Corporation. We do have all
7 counsel present as well as the jury.

01:41PM

8 And, ladies and gentlemen, the Court is going to be
9 providing you with preliminary instructions in a moment. And
10 the preliminary instructions, members of the jury, are
11 instructions that are provided to you at the beginning of the
12 case and that -- you will be provided with a basic orientation
13 with respect to this case. I will provide to you closing final
14 instructions after you hear all of the evidence. But at this
15 point, you are now the jury in this case, and it is my duty to
16 instruct you on what the law is.

01:41PM

17 "It is your duty to find the facts from all of the
18 evidence in the case. To those facts, you will apply the law
19 as I give it to you. You must follow the law as I give it to
20 you whether you agree with it or not. And you must not be
21 influenced by any personal likes or dislikes, opinions,
22 prejudices, or sympathy. That means that you must decide the
23 case solely on the evidence that is before you.

01:42PM

24 "At the end of the trial, I will give you final
25 instructions, and it will be the final instructions that will

01:42PM

1 govern your duties.

2 "Please do not read into these instructions or
3 anything that I may say or do throughout the course of the
4 trial that I have an opinion regarding the evidence or what
01:42PM 5 your verdict should be.

6 "Now, to help you follow along the evidence, I am
7 going to provide you with a brief description of the positions
8 of the parties, and this will be somewhat reminiscent of what
9 you heard previously downstairs.

01:43PM 10 "The Santa Clarita Valley Water Agency, or SCV
11 Water, asserts that Whittaker Corporation is liable for
12 contamination found in SCV Water's wells under federal and
13 state statutes and state common law. SCV Water has the burden
14 of proving these claims.

01:43PM 15 "Now, Whittaker Corporation denies the claims and
16 contends that other sources and the negligence of SCV Water
17 caused SCV Water's harm. Whittaker has the burden of proof on
18 this counter-claim. And SCV Water denies Whittaker's
19 counter-claim.

01:43PM 20 "Now, I told you about the burden of proof or made
21 mention of it and described it a little bit to you, and this is
22 the instruction that more specifically tells you what the
23 burden of proof is.

24 "So when a party has the burden of proof on any
01:44PM 25 claim or affirmative defense by a preponderance of the

1 evidence, it means you must be persuaded by the evidence that
2 the claim or affirmative defense is more probably true than not
3 true. You should base your decision on all the evidence
4 regardless of which party presented it.

01:44PM

5 "Now, the evidence you are to consider in deciding
6 what the facts are consists of the following: The sworn
7 testimony of any witness, the exhibits which are received into
8 evidence, any facts the lawyers have agreed to, the
9 stipulations I mentioned and I will get to in a little bit, and
10 any facts that I may instruct you to accept as proved.

01:44PM

11 "Evidence may be direct or circumstantial. Direct
12 evidence is direct proof of a fact such as testimony by a
13 witness about what that witness personally saw or heard or did.
14 Circumstantial evidence is proof of one or more facts from
15 which you could find another fact. You should consider both
16 kinds of evidence. The law makes no distinction between the
17 weight to be given to either direct or circumstantial evidence.
18 It is for you to decide how much weight to give to any
19 evidence.

01:45PM

01:45PM

20 "Now, in reaching your verdict, you may consider
21 only the testimony and exhibits received into evidence along
22 with the stipulations. Certain things are not evidence, and
23 you may not consider them in deciding what the facts are. I
24 will list them for you.

01:45PM

25 "Arguments and statements by lawyers are not

1 evidence. The lawyers are not witnesses. What they will say
2 in their opening statements and closing arguments and at other
3 times during the course of the case is intended to help you
4 interpret the evidence, but it is not the evidence. If the
01:46PM 5 facts as you remember them differ from the way the lawyers have
6 stated them, your memory of them controls.

7 "Questions and objections by lawyers are not
8 evidence. Attorneys have a duty to their clients to object
9 when they believe a question is improper under the rules of
01:46PM 10 evidence. You should not be influenced by the objection or by
11 the Court's ruling on it.

12 "Testimony that has been excluded or stricken or
13 that you have been instructed to disregard is not evidence and
14 must not be considered. In addition, sometimes testimony and
01:46PM 15 exhibits are received only for a limited purpose. When I give
16 you a limiting instruction, you must follow it.

17 "Anything you may have seen or heard when the court
18 was not in session is not evidence. You are to decide the case
19 solely on the evidence presented at the trial."

01:46PM 20 I mentioned limited purpose evidence. So some
21 evidence through the trial may be admitted only for a limited
22 purpose. If that's the case, I will instruct you as such. And
23 when I instruct you that an item of evidence has been admitted
24 only for a limited purpose, you must consider it only for that
01:47PM 25 limited purpose and not for any other purpose.

1 "There are rules of evidence that control what can
2 be received into evidence. When a lawyer asks a question or
3 offers an exhibit into evidence and a lawyer on the other side
4 thinks that it is not permitted by the rules of evidence, that
01:47PM 5 lawyer may object.

6 "Sometimes I may order that evidence be stricken
7 from the record and that you disregard or ignore the evidence.
8 That means that when you are deciding the case, you must not
9 consider the evidence that I told you to disregard.

01:47PM 10 "If I overrule the objection, the question may be
11 answered or the exhibit received. If I sustain the objection,
12 the question cannot be answered and the exhibit cannot be
13 received. Whenever I sustain an objection to a question, you
14 must ignore the question and must not guess what the answer
01:48PM 15 might have been.

16 "One of your responsibilities, as I mentioned this
17 morning, is to evaluate witness credibility, believability,
18 reliability.

19 "And in deciding the facts in this case, you may
01:48PM 20 have to decide which testimony to believe and which testimony
21 not to believe. You are free to believe everything a witness
22 says or part of it or none of it. Proof of a fact does not
23 necessarily depend on the number of witnesses who testify about
24 it.

01:48PM 25 "In considering the testimony of any witness, you

1 may take into account numerous factors, but let me give you
2 some illustrative ones that you may want to keep in mind:

3 "The opportunity and ability of the witness to see
4 or hear or know the things testified to;

01:49PM 5 "The witness's memory;

6 "The witness's manner, demeanor, or conduct while
7 testifying;

8 "The witness's interest in the outcome of the case,
9 if any;

01:49PM 10 "The witness's bias or prejudice, if any;

11 "Whether other evidence contradicted the witness's
12 testimony;

13 "The reasonableness of the witness's testimony in
14 light of all of the other evidence in the case; and

01:49PM 15 "Any other factor that bears on believability or
16 credibility.

17 "Now, sometimes a witness may say something that is
18 not consistent with something else he or she said. Sometimes
19 different witnesses will give different versions of what
01:49PM 20 happened. People often forget things or make mistakes in what
21 they remember. Also, two people may see the same event but
22 remember it differently.

23 "You may consider these differences, but do not
24 decide that testimony is untrue just because it differs from
01:49PM 25 other testimony. However, if you decide that a witness has

01:50PM 1 deliberately lied or testified deliberately untruthfully about
2 something important, you may choose not to believe anything
3 that witness said. On the other hand, if you think the witness
4 testified untruthfully about some things but told the truth
5 about others, you may accept the part you think is true and
6 ignore the rest."

7 Juror No. 1? Juror No. 1?

8 JUROR NO. 1: Yes.

9 THE COURT: You okay?

01:50PM 10 JUROR NO. 1: Yes.

11 THE COURT: All right.

12 "The weight of the evidence as to a fact does not
13 necessarily depend on the number of witnesses who testify.
14 What is important is how believable the witnesses were and how
01:50PM 15 much weight you think their testimony deserves."

16 Now, you're going to be hearing through the course
17 of this trial something called a deposition. You may know what
18 that is. But "A deposition is the sworn testimony of a witness
19 taken before the trial. The witness is placed under oath to
01:51PM 20 tell the truth, and lawyers for each party may ask questions.
21 The questions and answers are recorded.

22 "When a person is unavailable to testify at trial,
23 the deposition of that person may be used at the trial. You
24 will, in fact, hear from one or more witnesses through
01:51PM 25 deposition testimony.

1 "You should consider deposition testimony presented
2 to you in court in lieu of live testimony insofar as possible
3 in the same way as if the witness had been present to testify
4 here in the courtroom on the witness stand. There's no
01:51PM 5 difference between testimony, whether testimony is taken in an
6 office outside the courtroom or whether it's taken here in the
7 courtroom. It has the same solemnity, the same importance, the
8 same rules apply, and that's how you should proceed when
9 considering deposition testimony.

01:51PM 10 "Now, the parties have agreed, as mentioned, to
11 certain facts, as I will describe them below. You must,
12 therefore, treat these facts as having been proved," which
13 means these are facts, you must accept them. I am going to
14 order the parties to present these stipulations in an exhibit
01:52PM 15 that will be identified so that you will have the stipulations
16 listed for you during deliberations when you retire.

17 So first stipulated fact is as follows:

18 "The Whittaker site is located at
19 22116 West Soledad Canyon Road in Santa Clarita, California.
01:52PM 20 And I'll be referring to it as 'the site.' It covers
21 approximately 996 acres.

22 "Perchlorate and volatile organic compounds, VOCs,
23 have been found in soil and groundwater at and beneath the
24 site.

01:52PM 25 "Whittaker ceased manufacturing operations at the

1 site in approximately 1987.

2 "Santa Clarita Valley Water Agency's, SCVWA or SCV
3 Water, Saugus 1 and Saugus 2 wells were installed in
4 approximately 1988."

01:53PM

5 Just going off script here, members of the jury,
6 you're going to be hearing reference to certain wells and they
7 have names and/or numbers associated with them. So when this
8 refers to Saugus 1 and Saugus 2 wells, it's referring to
9 certain wells that you will hear about that bear that name and
10 number.

01:53PM

11 "On November 21, 1994, Whittaker and the California
12 Department of Toxic Substances Control, which is commonly
13 referred to as DTSC, entered into a consent order related to
14 contamination at the site.

01:54PM

15 "On November 27th, 2002, DTSC issued what's called
16 an Imminent and Substantial Endangerment Determination and
17 Order and Remedial Action Order to Whittaker.

01:54PM

18 "Perchlorate and VOCs, including trichloroethylene,
19 TCE, and tetrachloroethylene, PCE, were used and released to
20 the soil and have impacted groundwater at the site.

01:54PM

21 "Investigations at the site determined that
22 perchlorate and VOCs were generally released from the same
23 source areas. Perchlorate and VOCs released from the source
24 areas on the site followed the same migration pathway in
25 groundwater. Releases of perchlorate from the source areas

1 have migrated faster and farther than TCE, as TCE moves at a
2 rate up to 2.5 times slower than perchlorate.

3 "SCVWA Wells S-I and S-II" -- and the lawyers will
4 explain this to you, but I believe it relates to Saugus 1 and
01:55PM 5 Saugus 2, but here it's referred to as S-I and S-II --
6 "supplied water to its customers from 1988 through 1997.

7 "In 1997, perchlorate from the Whittaker site was
8 detected in the wells. SCV Water notified the Division of
9 Drinking Water, also commonly referred to as DDW, of the
01:55PM 10 contamination and shut down the impacted wells.

11 "SCV Water entered into an environmental oversight
12 agreement in 2003 with DTSC. Pursuant to a settlement
13 agreement that resolved a 2000 lawsuit brought by SCV Water's
14 predecessors in interest, Whittaker has paid for the
01:56PM 15 installation of perchlorate treatment systems for wells
16 Saugus 1 and 2, or S-I and S-II.

17 "The parties entered into a subsequent settlement
18 agreement in which Whittaker paid for perchlorate treatment
19 system for Well" -- and here's another one, different name --
01:56PM 20 "V-201," different well. And again, you'll hear about this.

21 "Following installation of the perchlorate treatment
22 system around 2010, SCV Water received a water supply permit
23 from DDW that allowed it to use the Saugus 1 and Saugus 2 wells
24 for potable water services and has continued to use those wells
01:57PM 25 to supply water to its customers since 2011.

1 "In 2010, perchlorate was detected in Well V-201,
2 and the well was taken out of service.

3 "Whittaker installed an on-site remediation system
4 to reduce the mass of VOCs in the groundwater and soil beneath
01:57PM 5 the site."

6 Those are the stipulations. And again, you will get
7 a written copy of these as well.

8 "I will now say a few words about your conduct as
9 jurors.

01:57PM 10 "First, keep an open mind throughout the trial and
11 do not decide what the verdict should be until you and your
12 fellow jurors have completed your deliberations at the end of
13 the case.

14 "Second, because you must decide this case based
01:57PM 15 only on the evidence received in the case and on my
16 instructions as to the law that applies, you must not be
17 exposed to any other information about the case or to the
18 issues it involves during the course of your jury duty. Thus,
19 until the end of the case or unless I tell you otherwise, do

01:58PM 20 not communicate with anyone in any way and do not let anyone
21 else communicate with you in any way about the merits of the
22 case or anything to do with it. This includes discussing the
23 case in person, in writing, by phone, tablet or computer, or
24 any other electronic means via e-mail, text messaging, or any
01:58PM 25 Internet chat room, blog, website, or application, including,

01:58PM

1 but not limited to, Facebook, YouTube, Twitter, Instagram,
2 LinkedIn, Snapchat, TikTok, or any other forms of social media.
3 This also applies to communicating with your fellow jurors
4 until I give you the case for deliberations, and it applies to
5 communicating with everyone else, including your family
6 members, your employer, the media or press, and the people
7 involved in the trial; although, you may notify your family and
8 your employer that you have been seated as a juror in this case
9 and how long you expect the trial to last.

01:59PM

10 "But if you are asked or approached about your jury
11 service or anything about this case, you must respond that you
12 have been ordered not to discuss the matter and please report
13 the contact to the Court through my courtroom deputy, Mr. Cruz.

01:59PM

14 "Because you will receive all of the evidence and
15 legal instruction you properly may consider to return a
16 verdict, you're not permitted to read, watch, or listen to any
17 news or media accounts or commentary about the case or anything
18 to do with it; although, I have no specific information that
19 there will be news reports about the case.

01:59PM

20 "Also, do not do any research, such as consulting
21 dictionaries, searching the Internet, or using other reference
22 materials, and do not make any investigation or in any other
23 way try to learn about the case on your own. That includes not
24 visiting or viewing any place discussed in the case, and do not
02:00PM 25 use the Internet or any other resource to search for or view

1 any place discussed during the trial.

2 "Also, do not do any research about this case, the
3 law, and the people involved, including the parties, the
4 witnesses, or the lawyers, until you've been excused as jurors.

02:00PM 5 If you happen to read or hear anything touching upon this case
6 in the media, turn away and report it to me as soon as
7 possible.

8 "These rules are important because they protect each
9 party's right to have this case decided only on the evidence
02:00PM 10 that has been presented here in this courtroom. Witnesses here
11 in court take an oath to tell the truth, and the accuracy of
12 their testimony is tested through the trial process. If you do
13 any research or investigation outside the courtroom or gain any
14 information through improper communications, then your verdict
02:00PM 15 may be influenced by inaccurate, incomplete, or misleading
16 information that has not been tested by the trial process.

17 "Each of the parties is entitled to a fair trial by
18 an impartial jury. And if you decide the case based on
19 information not presented in this courtroom, you will have
02:01PM 20 denied the parties their right to a fair trial.

21 "Remember, you have taken an oath to follow the
22 rules, and it is very important that you do, in fact, follow
23 these rules.

24 "A juror who violates these restrictions and
02:01PM 25 jeopardizes the fairness of these proceedings, that is, a juror

1 who violates these proceedings jeopardizes the fairness of
2 these proceedings. And if any juror is exposed to any outside
3 information, please notify the Court through Mr. Cruz
4 immediately.

02:01PM

5 "Now, I do urge you to pay close attention to the
6 trial testimony as it is given. During deliberations, you will
7 not have a transcript of the trial testimony.

02:02PM

8 "Now, each of you has received a notebook. And if
9 you wish, you may take notes to help you remember the evidence.
10 If you do take notes, please keep them to yourself until you
11 and your fellow jurors go to the jury room to decide the case.
12 Do not let note-taking distract you.

02:02PM

13 "When you leave, your notes should be left in the
14 envelope in the jury room. No one will read your notes.
15 Instead, they will be collected and destroyed at the conclusion
16 of this case.

02:02PM

17 "Whether or not you decide to take notes, you should
18 rely on your own memory of what was said. Notes are there only
19 to assist your memory. You should not be overly influenced by
20 your notes or those of your fellow jurors.

02:02PM

21 "Now, during the trial, it may become necessary for
22 me to talk with the attorneys out of the hearing of the jury,
23 either by having a conference at the bench when the jury is
24 present in the courtroom or by calling a recess. Please
25 understand that while you are waiting, we are working. The

1 purpose of these conferences is not to keep relevant
2 information from you but to decide how certain evidence is to
3 be treated under the rules of evidence and to avoid confusion
4 and error.

02:03PM

5 "I may not always grant an attorney's request for a
6 conference. Please do not consider my granting or denying a
7 request for a conference as any indication of my opinion of the
8 case or of what your verdict should be."

02:03PM

9 I'll tell you right now, it's very unlikely I'm
10 going to grant a request for a bench conference. It's
11 possible, but it's not likely. I don't -- I generally don't do
12 it, and I especially don't do it during the pandemic. But we
13 may need to excuse you if I do need to speak with the lawyers
14 about something that needs to be decided at that moment,
15 otherwise we can't proceed, and it may take a minute or two and
16 I don't want you sitting here waiting around.

02:03PM

17 Now, I'm going to go through the trial process and
18 the overview of a trial. This is probably familiar to most of
19 you but just to make sure.

02:03PM

20 First of all, there are two parties in this case.
21 There's the plaintiff, and I've already explained who the
22 plaintiff is in this case. This is Santa Clarita Valley Water
23 Agency, and they now are sitting on that side closest to the
24 jury. And on the other side is Whittaker Corporation. They
25 are the defendant in this case, and I'm pointing to them.

02:04PM

1 And the trial will start after I finish -- and I
2 soon will be done -- with opening statements. And the
3 plaintiff will go first and deliver an opening statement, and
4 then the defense will proceed.

02:04PM 5 After that, you will hear the evidence in the case.

6 In light of the time at present, my best guess is
7 we're going to start the evidence tomorrow morning. In fact,
8 we may run a little bit late this afternoon because I want to
9 make sure that you hear all of the opening statements in their
02:04PM 10 completion and not trail any of that over until tomorrow.

11 But once the evidence begins, we start with the
12 plaintiff's case. And that will be the time for the plaintiff
13 to present the evidence it intends to present.

14 After that, the defense can present its case, and
02:05PM 15 that's called the defense case. After the defense presents its
16 case and closes, the plaintiff, if it chooses, can try to
17 provide additional evidence called rebuttal evidence in its
18 rebuttal case, responding to the defense case. And
19 theoretically, this can continue going on, so Whittaker then
02:05PM 20 can provide surrebuttal to rebut or respond to the evidence
21 that was presented in the plaintiff's rebuttal case.

22 After the evidence has been heard and both sides
23 have fully rested, I will provide you final instructions.
24 These will be the more detailed instructions I was suggesting
02:05PM 25 to you all during the jury selection process where you'll learn

1 about the various claims, the elements of the claims, issues of
2 liability damages, what has to be proven, who has the burden of
3 proof, all of those types of instructions you will be provided
4 at the close of the evidence.

02:05PM

5 After you have heard me give you final instructions,
6 the lawyers will have an opportunity to present closing
7 argument, and then you will retire and deliberate on this case.

02:06PM

8 When you do so, your deliberations, again, have to
9 depend solely upon the evidence presented in the courtroom, the
10 testimony, the exhibits, as well as the stipulations that I
11 read to you.

12 Everything else is not evidence, and you cannot
13 consider it.

02:06PM

14 And I'm just going to point out a few things that
15 may not be obvious. Some of it is and some of it I already
16 referenced but just so that you know what's not evidence.

02:06PM

17 It's very easy, members of the jury. Just look to
18 the left side of the screen. If it's not testimony, if it's
19 not exhibits, if it's not a stipulation, it's not evidence. So
20 if it's not coming from a witness's mouth, it's not coming from
21 a stipulation, and if it's not coming from an exhibit that
22 you'll be able to see, it's not evidence.

02:06PM

23 So what does that leave? The lawyers speak. How do
24 they speak? They give an opening statement. Is that evidence?
25 No. Just because they tell you what they think the evidence is

1 going to be, that's not what the evidence is. It's what you
2 actually see from the witnesses, the exhibits, and the
3 stipulations.

02:07PM 4 And if they say something that's different from what
5 the evidence ultimately shows, ignore what they said that's
6 inconsistent, disregard it because they haven't provided any
7 evidence at all.

02:07PM 8 The attorneys ask questions throughout the case. Of
9 course, they must do so in order to get witnesses to provide
10 evidence. But their questions themselves actually is not the
11 evidence.

02:07PM 12 So just because a lawyer asks a question that
13 suggests something is true doesn't make it true. Listen to the
14 witness's answer, and then evaluate the witness's answer in the
15 context of the question, of course.

02:07PM 16 And you're not to receive any information outside
17 the courtroom. And if you do, you have an obligation to report
18 it to the Court. So if you receive any information, anyone
19 approaches you, you read anything about this case, whatever the
20 source is, you have an obligation, please, to report that to my
21 courtroom deputy.

02:08PM 22 Now, one last word about opening statements. The
23 parties may but they're not required to present an opening
24 statement. I believe both sides intend to do so. An opening
25 statement, as I've already told you, is not evidence. What I

1 haven't told you but what is equally true is that an opening
2 statement is not argument.

3 So if the lawyers start to argue in opening
4 statement and there's an objection, I'm going to stop them
02:08PM 5 because they're not allowed to argue at this point. All they
6 can do, essentially, is give you a roadmap. It's this -- their
7 opportunity to give you a roadmap, an outline of what they
8 expect that the evidence will show so this way you have some
9 context, the framework before you actually listen to the
02:08PM 10 evidence.

11 Now, with regard to trial -- so let me just tell
12 you, actually. So as I showed to you previously, we're going
13 to be going through this week through Friday. And next week
14 we'll be in session Monday, Tuesday, and Wednesday. We will
02:08PM 15 break for Thursday and Friday. You'll come back, I believe
16 it's the 30th, the -- the 30th and the 1st through whatever
17 that week ends, and then we'll expect to spill into the
18 following week. That's what I'm expecting.

19 Now, I've given you the best estimate that I have
02:09PM 20 based upon my working with the lawyers, and I'm going to
21 continue to work with them to try to make sure that everything
22 stays on track. But sometimes things get off track because a
23 trial is a dynamic process dealing with human beings and things
24 that sometimes cannot be controlled.

02:09PM 25 I can't promise you that the estimate that I gave

1 you is going to be scrupulously adhered to. What I can promise
2 you is that I'm going to scrupulously try to get the lawyers to
3 adhere to it. And I can also promise you that if it turns out
4 that we're off track, on the plus side or the minus side -- so
02:09PM 5 I'm not expecting in this case that it's going to be on the
6 minus side, but more times than not, in my experience, it is.

7 If it's off in either direction in a material way, I
8 will give you that information to the best of my ability so
9 that you can have some understanding and can do whatever
02:10PM 10 planning that you need to to continue on with your lives.

11 One last thing. And it's already come up and I
12 don't mean to embarrass you, Prospective Juror No. 1, but I see
13 you nodding a little bit. Maybe I'm -- maybe I'm misperceiving
14 it, and that happens. And -- and that's -- I'm glad you told
02:10PM 15 me that because that's a problem that I have.

16 The problem I have is you're all kind of far away.
17 My sight is getting worse, unfortunately. And it's not made
18 any better by my looking through these various -- the
19 plexiglass here. There's plexiglass here, there's plexiglass
02:10PM 20 there, there's plexiglass there, and it's somewhat distorted.

21 If I can't tell whether you're looking down, whether
22 you're closing your eyes and just deep in thought, paying
23 careful attention, I have an obligation to err on the side of
24 trying to make sure you're paying attention. So please don't
02:11PM 25 take it that I'm trying to embarrass you. Don't be embarrassed

1 by it. I just need to make sure that you're all paying
2 attention.

3 And so if it appears to me either I don't know or it
4 appears to me maybe you're dozing off, is that what I'm going
02:11PM 5 to do to try to make this as discrete as possible is I'm going
6 to -- I'm going to flick the mic.

7 Now, here's what I expect you to do. So again, not
8 trying to pick on you, Juror No. 1, but if you hear me doing
9 this, here's what I expect you to do, all of you, is to look at
02:11PM 10 me. Now I know you're all paying attention. If I don't see
11 you doing that, I'm going to say, No. 1, are you okay? Do we
12 need to take a break or whatever we need to do?

13 Now, this happens and it happens in every case,
14 virtually without fail. I've done one-day trials where people
02:11PM 15 are nodding off.

16 So I need to make sure that you're all paying
17 attention. Do what you can, try to get the rest that you need.
18 This case is important. Every case is important. And so it is
19 important that you do your best to focus on all of the
02:12PM 20 evidence.

21 Now, with that, I have concluded these preliminary
22 instructions. And we are going to start now with opening
23 statement by plaintiff.

24 And plaintiff's counsel, you may -- Mr. Richard, you
02:12PM 25 may proceed to the lectern and proceed with your opening

1 statement.

2 MR. RICHARD: Thank you, Your Honor. I'll try not
3 to nod off.

4 Can you all see that up here?

02:12PM 5 Okay. Good afternoon, Your Honor, opposing counsel,
6 ladies and gentlemen of the jury. We're here because
7 Whittaker Corporation is responsible for contaminating the
8 groundwater that my client relies on to serve hundreds of
9 thousands of customers' drinking water. The evidence will show
02:13PM 10 that over many years Whittaker Corporation dumped and released
11 the chemicals at issue in this case across what you heard was
12 almost a thousand-acre site.

13 They did that for many years, and the plant closed.
14 The facilities closed in 1987. But the evidence will show that
02:13PM 15 in the '80s, they delayed treating the contamination. They
16 delayed installing groundwater monitoring to determine the
17 extent of the contamination. They lost many, many years once
18 they found out that they had a bigger problem than they thought
19 they had.

02:13PM 20 Before we talk about that evidence, though, I'd like
21 to talk a little bit about my client.

22 THE COURT: And, Mr. Richard, when you're doing so,
23 just a reminder, you need to be speaking into the microphone.
24 I -- I do understand that, because of the setup -- and I've
02:13PM 25 explained this to the lawyers, and I'm going to ask for your

1 forgiveness for those of you in the gallery for the lawyers.
2 Their back is going to be towards you. And we're doing that
3 because otherwise -- we have plenty of space during ordinary
4 times in that box, but we're trying to give people a certain
02:14PM 5 amount of space.

6 But you do need to speak into the microphone, and if
7 you don't want me to continue to interrupt, make sure you
8 continue to do that.

9 MR. RICHARD: Yes, Your Honor, it's just an old
02:14PM 10 habit I like to look at the people I'm speaking to.

11 THE COURT: I understand.

12 MR. RICHARD: I'll do the best I can, Your Honor.

13 THE COURT: Yes.

14 MR. RICHARD: Thank you.

02:14PM 15 So Santa Clarita Valley Water Agency, as you might
16 expect, is located in Santa Clarita just up Highway 5. You
17 drive by if you go up and down the 5. And it was about
18 100 years ago that the water agency started. It had about
19 125 customers, and it's grown to over 300,000. And it has
02:14PM 20 three different divisions at the present time. And their
21 mission is to ensure the Santa Clarita Valley has reliable
22 supplies of high quality water at a reasonable cost. And the
23 folks at the water agency believe every citizen of California
24 has the right to pure and safe drinking water.

02:15PM 25 So what are we talking about in this case? You're

1 going to see, uh -- and you all have little monitors --
2 right? -- so you can all see this? You'll see this map and
3 variations of this map time and time again. The figure on the
4 right is the thousand-acre site. Some folks think it looks
02:15PM 5 like a horse, so sometimes I might be referring to different
6 parts of the horse.

7 To the left -- to the east of the Whittaker site,
8 you see the four wells at issue in this case. Saugus 1 and
9 Saugus 2 are the ones closest to the site and then V-201 and
02:15PM 10 V-205. And as the judge read in the stipulated facts, two of
11 these wells were previously shut down due to the contamination
12 from the Whittaker site, the Saugus 1 and Saugus 2. Two other
13 wells were shut down and are currently not serving drinking
14 water.

02:16PM 15 You'll hear this site referred to sometimes as "the
16 site." That's Whittaker's area. You'll sometimes hear it
17 called the "Whittaker site," "the Bermite site." Why is it
18 called the Bermite site? Because Whittaker acquired Bermite in
19 1967 and so -- and sometimes it's called the "Bermite-Whittaker
02:16PM 20 site."

21 So the evidence will show that over this entire
22 period -- I mean, Bermite operated from 1942 to 1967, and then
23 Whittaker acquired it and is the successor to Bermite. And so
24 there are the wells that we'll be talking about in this case.

02:16PM 25 And with respect to the Whittaker site, the evidence

1 will show that they hired -- they eventually hired consultants
2 to tell them how widespread the contamination in the soil was,
3 and the evidence will show that these chemicals at issue in
4 this case leached through the soil into what's called an
02:17PM 5 aquifer. That's the groundwater. And one of the consultants
6 hired by Whittaker identified many areas at the site that had
7 high concentrations, large volumes of the volatile organic
8 compounds at issue in this case, TCE and PCE. So you can
9 see --

02:17PM 10 Your Honor, may I put up a hardboard at this point
11 with this map?

12 THE COURT: You may.

13 Mr. Blum, please put your mask on.

14 MR. RICHARD: Thank you. We'll see how this works.

02:17PM 15 Honestly, I'm not sure which is easier, the hardboard but --

16 So we'll see this map and variations of this map to
17 show the areas of the site that were impacted by the TCE. And
18 you'll hear evidence that TCE was found in the soil and that
19 Whittaker more recently has been working to remove TCE. And
02:18PM 20 you might say, Well, how much, Mr. Richard? The evidence will
21 show over a hundred thousand pounds of TCE and other VOCs, PCE,
22 have been removed from the soil, but there's more than a
23 hundred thousand pounds still down there according to
24 Whittaker's own experts. That's a lot of TCE. A lot of TCE
02:18PM 25 was dumped and released at this site over a period of many

1 decades.

2 You'll also hear from a number of experts who will
3 talk about TCE in the groundwater. How do they find out TCE is
4 in the groundwater? Well, you'll hear about something called a
02:18PM 5 monitoring well, and that's, you know, maybe 14, 16 inches.

6 They dig down, and then they extract the water from the
7 groundwater beneath the Whittaker site, and they test it. And
8 the evidence will show that it was back in about 1985 that
9 Whittaker itself had a well on the site that they used for
02:19PM 10 dousing fires and other purposes, and they detected VOCs in
11 that well.

12 And so when we're talking about the wells that my
13 client uses, they're not the old-fashioned pump well that you
14 might have seen in the movies or -- you know, my grandma had
02:19PM 15 one like this, actually. And they're not the simple well that
16 some people use for decoration now.

17 As you might expect, the wells my client uses, these
18 pumping stations pump water from the aquifers. They test it
19 all of the time. They make sure that the operation is clean
02:19PM 20 and efficient. This is one of the wells that we'll be talking
21 about, V-201, and this is V-205. The V, I believe, is for
22 Valencia, one of the three divisions of the water agency.

23 And the evidence will show that these wells --
24 there's two formations out there, two aquifers underneath the
02:20PM 25 ground. The aquifers are kind of the sandy area where the

1 water -- the groundwater can be found. And the deeper of these
2 aquifers is called the Saugus aquifer. So the creative naming
3 of the wells, Saugus 1 and Saugus 2, have to do with being in
4 that deeper aquifer.

02:20PM

5 And so the evidence will show -- and here we're
6 looking at a diagram -- these wells have been dug over a
7 thousand feet down, in some cases 1,600 feet to get to that
8 deeper aquifer.

02:20PM

9 The evidence will show -- this is a timeline. I
10 know it's a little hard to see, and I don't have my red -- do I
11 have a red thing on here? Nope. Shouldn't have done that.

12 Sorry, Your Honor, I pressed the wrong button.

13 Okay. I won't press that one again.

02:21PM

14 The -- you'll see this timeline again as witnesses
15 testify in this case. But the evidence will show that, over a
16 period of many, many decades, ammunition was made at this site
17 in addition to fireworks, Sidewinder missiles, JATO rockets.
18 The site was busy in World War II. And so many, many different
19 types of ammunition, bombs, flares, explosives have been made
20 at this site over a period of many decades.

02:21PM

21 And you will hear and see documents that there were
22 many activities that use the chemicals at issue in this case,
23 the solvents we're talking about and the perchlorate.

02:21PM

24 Perchlorate is actually an oxidizing agent. One witness will
25 explain it helps things go boom, so that's used in propellant

1 and things for missiles and explosives. And the solvents are
2 used for cleaning and degreasing. It was one of the major
3 uses.

02:22PM 4 So you'll hear about burn pits where they burn
5 things. Whittaker would have -- I mean, all sorts of things
6 were burned in the burn pits.

02:22PM 7 You'll hear about something called a hog-out
8 operation. What's that? Witnesses will explain that, when
9 they had missile casings or shell casings that for whatever
10 reason still had propellant or explosives in it, they would
11 have a high pressure water hose and wash that out. And that's
12 where a lot of the perchlorate then was released, sometimes to
13 a pond. Sometimes it ran down the hillside.

02:22PM 14 You'll hear about mixing and blending and grinding.
15 These are all processes that were used, and you'll see maps
16 showing where those processes occurred throughout the site.

02:23PM 17 Degreasing, I mentioned, was a big operation, used a
18 lot of these solvents. And then landfills. Landfills, what it
19 sounds like. The evidence will show that, in addition to
20 trash, chemicals, including these VOCs, and items containing
21 perchlorate were dumped in various areas at the site that
22 became landfills.

02:23PM 23 Degreasing is a process where the solvent, either
24 TCE or PCE, is heated up, becomes a vapor. And you put pieces
25 of equipment or shells or other things that need to have all of

1 the grease removed, the vapor reacts, the solvent reacts to
2 that grease, and then it falls to the bottom of this degreaser
3 and forms a kind of sludge. And it looks like -- a little bit
4 like the deep fryer that we heard about in voir dire.

02:23PM

5 The evidence will show that these solvents were not
6 just used at one or two places at the Whittaker site but were
7 used in many different areas, many different areas either
8 stored or released or the chemicals were dumped on the ground.
9 Not just a little bit but a lot.

02:24PM

10 And so, for example, you'll see a map -- I know it's
11 hard to see all the dots on this map. But this shows -- for
12 example, the blue dots are chemical storage, magazines, cure
13 ovens. The pink dots are mixing, blending, grinding. The
14 green dots are these parts cleaning where they were using
15 solvents.

02:24PM

16 Now, you might ask, well, didn't -- didn't Whittaker
17 have a policy against dumping solvents on the ground? And
18 you'd be right, that Whittaker said they had a policy against
19 dumping on the ground. But the evidence tells us, the evidence
20 tells us that, at the time before this site closed in 1987,
21 Whittaker was documenting at the time, their safety and
22 environmental folks, we have a serious problem here with how
23 we're handling our hazardous substances, including perchlorate
24 and these VOCs.

02:24PM

02:24PM

25 So, for example, you'll see internal memos in this

1 case. Here's one from May 29th, 1979. And this is written
2 from one Whittaker person to another Whittaker person; right?
3 It's John Peloquin to Zoyd Luce. And these are names you're
4 going to hear throughout the case, folks who worked at
02:25PM 5 Whittaker, internal memos.

6 And this is Mr. Peloquin. At the time he was their
7 corporate industrial hygienist concerned about safety and some
8 of these issues about how they handled the waste and chemicals
9 at the Whittaker site. And so he's telling us -- he's telling
02:25PM 10 Mr. Zoyd Luce in 1979, "It appears that indiscriminate dumping
11 of waste to the environment was occurring." And he describes
12 in the memo he went out and looked. You know, he spent some
13 time looking around. "A waste dumping program must be
14 initiated." That's Exhibit 202. They knew they had a problem.
02:26PM 15 He described, "A survey of your facility on May 22nd and 23rd
16 revealed some serious situations that must be addressed."

17 So this is a fellow from Whittaker corporate. They
18 have sites all over. They're now part of a large conglomerate
19 aerospace company, Meggitt Corporation, out of England. But at
02:26PM 20 the time -- so you'd have a Whittaker Corporate fellow come
21 into Bermite, their division, saying you have a serious problem
22 here, these situations must be addressed. The situation I'm
23 writing about, situations include not only health and welfare
24 but also environmental protection. This is 1979.

02:26PM 25 And the evidence will show that these risks that

02:27PM

1 they're talking about, the health and environmental protection
2 concerns, they knew about in 1979. The -- this issue of
3 contamination on the ground making its way to groundwater has
4 been known for many, many years. It's not something -- the
5 evidence will show it's not something that people just woke up
6 one day in 1979 and said, you know, goodness, if we dump stuff
7 on the ground, it might get to the groundwater.

02:27PM

8 And so at this time when Mr. Peloquin is writing,
9 he's talking about that vapor degreasing system that we just
10 talked about where they use those chlorinated solvents like TCE
11 and PCE so that it can react with the grease, form this sludge
12 that needs to be dealt with. And he's pointing out the hazards
13 of the substance, these chlorinated solvents in the vapor
14 degreaser. The vapor degreaser outside the machine shop needs
15 fail-safe. And he tells us, "Acute exposure to the solvent
16 vapors can cause death. Chronic mild exposure to the
17 vapors" -- so even mild exposure to these vapors with these
18 solvents has been known to cause permanent liver damage.
19 That's way back in 1979.

02:27PM

20 The evidence will show -- we'll have a -- one of the
21 witnesses you'll hear from is a fellow who worked at the EPA in
22 the early 1970s, and he's been doing these site assessments for
23 40 years. That's Dr. Rick Hughto. We'll hear from him this
24 week. And he'll describe some of the well-known examples of
25 this -- folks have known that, if you dump a lot of stuff on

02:28PM

1 the ground, chlorinated solvents, perchlorate, it can leech
2 down into the groundwater.

3 And he'll talk about a well-known analysis back in
4 1899 talking about pollution of nearby wells, laws in
02:28PM 5 California back in 1907, 1917 to protect drinking water. He'll
6 talk about the 1948 Federal Water Pollution Control Act. And
7 then in California, we had something called the Dickey Act back
8 in 1949, and there's actually a Dickey Commission formed to
9 study. And as you might expect, even back in the '30s and
02:28PM 10 '40s, California and, in particular, Southern California, the
11 evidence will show, was on the forefront of trying to
12 understand and protect drinking water supplies.

13 So, for example, Dr. Hughto will explain that back
14 in the '40s -- and this is from the Dickey Commission that led
02:29PM 15 to that law -- the propensity of industrial waste including
16 chlorinated solvents to contaminate groundwater was understood
17 in the 1940s in Southern California. This understanding was
18 not limited to a small group of specialists but extended to
19 regulators, industry, and the interested public.

02:29PM 20 Industrial waste discharge onto land can reach
21 underground waters where dilution occurs so slowly that the
22 effects are always long-lasting and in some places practically
23 permanent pollution. That's back from 1948 and '49 from
24 California when they were adopting some of these early
02:29PM 25 environmental protection laws.

1 And, again, the evidence will show that -- and
2 there's others from the '50s and '60s. And, again, in
3 Los Angeles, the protection of the underground water basins
4 cannot be overemphasized. That's not just something that came
02:30PM 5 about in 1980 or 1979. It's been an issue for many years in
6 California.

7 And that's important because that tells us that, if
8 you're a big manufacturing company handling solvents that have
9 known health risks, you need to be careful. You need to be
02:30PM 10 careful.

11 And Whittaker knew it was not supposed to be dumping
12 these solvents on the ground. And their safety fellows
13 testified in deposition, we did not allow people -- it wasn't
14 part of our policy to just dump things. It wouldn't have been
02:30PM 15 safe. And that's Zoyd Luce, the fellow you saw in one of those
16 memos from the '80s.

17 And yet here we have Zoyd Luce in 1980 writing,
18 "Attached is a list of current violations." What's he talking
19 about? The -- one of the environmental laws that was adopted
02:31PM 20 in this country, the Resource Conservation and Recovery Act
21 adopted in the late '70s and then there's more regulations and
22 more investigations. And so that's the one particular law he's
23 talking about, sometimes referred to as RCRA.

24 And he's telling the folks at Whittaker, here's a
02:31PM 25 list of current violations at the Whittaker site in 1980. And

1 he tells us, "Types of material being dumped on ground by
2 building location." So they had a policy against dumping on
3 the ground, and yet he's telling us in 1980 not just generally
4 but 29 different areas at that time in this one memo from this
02:31PM 5 one person, 29 areas where there's dumping on the ground.

6 Building 317. They had a big impoundment there.
7 You're going to hear about the impoundment leaked, and then
8 later they found out there was a massive amount of
9 trichloroethylene, TCE at this impoundment at Building 317.

02:32PM 10 And he identifies PCE. PCE, one of the chlorinated solvents at
11 issue in this case, is being dumped on the ground back in 1980.
12 Talks about the auto shop also uses solvents.

13 Now, for the burn pits -- so for all the other
14 29 areas he talks about, he identifies types of chemicals. For
02:32PM 15 the burn pits, what does he say? All chemicals and explosives
16 on plant. All those things end up in the burn pit, this
17 dumping area where they found a massive amount of TCE many,
18 many years after this.

19 He talks about the point area. We have more
02:32PM 20 solvents being dumped on the ground. I mean, he tells us
21 29 sites where we're dumping on the ground. This is a
22 violation.

23 Hula Bowl area. It sounds almost like you want to
24 go on vacation to the Hula Bowl, but that's where they dumped
02:33PM 25 trash, garbage, oil, solvents. That's back in 1980.

1 This is what a burn cage looks like. This is a
2 picture from the Whittaker site. They would burn things. This
3 is the larger burn area, sometimes called the Burn Valley.

4 This area at the Whittaker site is the steep
02:33PM 5 ravines. And so these ravines, they often became a landfill.
6 Others, when the water would wash down, it would wash right
7 down those deep, deep ravines.

8 You'll see pictures of storage tanks and buildings,
9 and these are areas that they were trying to close out in the
02:33PM 10 mid '80s when they found out that they had widespread
11 contamination.

12 Here's a -- you'll see right after, about a week
13 after he sent that first memo, Mr. Luce is complaining about
14 problems, contamination of the hog-out area. The area is
02:34PM 15 presently not adequately policed. Those are his words at the
16 time. You don't have sufficient people to police this area to
17 do what? To keep people at Whittaker from dumping these
18 substances on the ground or having a hog-out operation with
19 this high-powered water washing out those contaminants. It's
02:34PM 20 not adequately policed. The evidence will show that it was
21 actually out of control was the words they used.

22 Several of the drums have deteriorated to such an
23 extent that it is obvious -- this was obvious to him in 1980 --
24 the hog-out area has become a storage area for waste, again, in
02:34PM 25 what? In direct violation of RCRA.

1 The waste propellant -- and when we see propellant,
2 that's perchlorate. That contains perchlorate. That's the
3 oxidizing agent that makes it go boom. The waste propellant
4 has washed down the hill in copious amounts -- that's not
02:35PM 5 something you want -- and is contaminating the Orofino Canyon
6 stream in direct violation of RCRA. So there's no question
7 they knew they had a problem, and it wasn't just at one or two
8 areas of the Whittaker site in 1980.

9 But he goes on in the same memo, hey, we came up
02:35PM 10 with instructions for waste disposal in July 1979. Yet those
11 instructions have been ignored. Why? And this is --
12 this hog-out area was a mess. Wooten, one of the other folks
13 there, claims he cannot control the problem. That's what we
14 mean by a problem that's out of control.

02:35PM 15 He tells them again, "The problem is serious. The
16 safety department cannot continue to promulgate guidelines and
17 rules when their execution by management does not occur." And
18 that's really the story here. You have some safety and
19 environmental guys coming up with policies. How do you handle
02:35PM 20 these hazardous substances, the chlorinated solvents, the
21 perchlorate, the waste, the hazardous waste? We come up with
22 rules. You guys aren't following them.

23 Did they take care of it? Are there memos from 1981
24 and '82 talking about the same problem? Here you have 1982,
02:36PM 25 John Peloquin describing the Hula Bowl as a disaster area.

1 So this is August 1982. And he doesn't mince words
2 here, does he? "The Hula Bowl is a disaster area. All illegal
3 industrial and sanitary waste must be removed." That's
4 important because other witnesses have said, oh, it was just
02:36PM 5 some metal, some wood, some paper. Again, the memos at the
6 time when Whittaker, before the site closed and they're writing
7 to one another saying we have a problem, he didn't say wood and
8 metal and paper, construction materials. "Illegal industrial
9 and sanitary waste must be removed."

02:37PM 10 "The accumulated scrap should be burned before the
11 upcoming inspection." Now, this is a common theme, I won't go
12 through all of the evidence this afternoon. It is late, and we
13 wear these masks. It's -- it's -- the time after lunch is
14 often the hardest time in a trial, I'll be honest. So I won't
02:37PM 15 go through all that evidence. But this is an important point
16 that, before the inspectors came -- you're going to hear about
17 Mr. Peloquin and how he dealt with the inspectors from the EPA
18 and from the State Department of Toxic Substance Control.

19 He was trying to avoid having the inspectors look
02:37PM 20 too far into the problems at Whittaker because he did not want
21 Whittaker to have to then install what? Groundwater monitoring
22 wells. We have to avoid putting in wells because then the
23 extent of the contamination will come out. Then we'll have a
24 real problem.

02:37PM 25 And Mr. Peloquin tells us this. The Hula Bowl

1 apparently has been used as an oil changing station. Again,
2 not just for wood and scrap metal. The present condition of
3 the Hula Bowl would very likely trigger what? Groundwater
4 monitoring.

02:38PM

5 The evidence will show that's what Whittaker tried
6 to avoid and did avoid for many, many years. They knew they
7 had a problem, and they delayed and avoided groundwater
8 monitoring for as long as they could.

9 (Videotape played, not reported.)

02:39PM

10 MR. RICHARD: Gentleman, that's John Peloquin, that
11 fellow who was writing those memos, the one who said this could
12 likely trigger groundwater monitoring, tells us it's too
13 expensive.

02:39PM

14 The evidence will show that Whittaker actually knew
15 that it was required to install groundwater monitoring back in
16 1982. And they hire a consultant, and they say, how can we get
17 a waiver of this groundwater monitoring? Can we avoid this?
18 Delay this? So they hire a geologist, Mr. Bean. Mr. Bean
19 comes in, takes a brief look, he says -- and tells them, "I
20 don't think you want a full investigation from me because that
21 would almost certainly tell you that you cannot avoid
22 groundwater monitoring." 1982, they hire a consultant to come
23 in.

02:40PM

24 There we go.

02:40PM

25 And he's this geologist, Robert T. Bean, and you'll

1 see this memo, a number of witnesses talk about it. He's hired
2 to what? To evaluate whether or not groundwater monitoring for
3 hazardous waste would be required. And he explains -- kind of
4 wordy, I'll go through it -- "Groundwater monitoring
02:40PM 5 requirements may be waived if the owner or operator" -- right?
6 That's Whittaker -- "can demonstrate that there is a low
7 potential for migration of hazardous waste to water supply
8 wells.

9 That's really why we're here, isn't it? Did their
02:41PM 10 stuff, their chemicals, their VOCs contaminate the wells that
11 my client uses? And they looked at this issue back in 1982,
12 almost 40 years ago.

13 Mr. Bean tells them, "Unfortunately, however, there
14 is almost certainly the potential for migration of hazardous
02:41PM 15 waste or hazardous waste constituents."

16 And there's no question that the executives of
17 Whittaker, all the way to the president of the company, saw
18 this memo at that time. And he tells them, "A more complete
19 hydrogeologic investigation could be undertaken." Right? I
02:41PM 20 could take some samples and I could take some further look-see
21 here at your soil -- "however, since the results of a complete
22 investigation would probably be negative as far as justifying a
23 waiver on monitoring wells is concerned, such an investigation
24 is not recommended." I could look further, but that's not
02:41PM 25 going to get you off the hook for doing the groundwater

1 monitoring.

2 The estimated cost of a groundwater monitoring
3 system -- and this is Whittaker actually writing to the state
4 trying to avoid groundwater monitoring -- based upon a proposal
02:42PM 5 from International Engineering Company is in excess of
6 \$120,000. "We feel that no benefit would be derived by
7 Bermite" -- well, that's probably true -- "or from the
8 community in which we reside by the installation of a
9 groundwater monitoring system at Bermite."

02:42PM 10 And the evidence will show -- I know it's hard to
11 see -- but those early years, how many groundwater monitoring
12 wells did they have? None until 1985. They put in one.
13 They're supposed to have four for each area where there's
14 suspected release from the soil into the groundwater. They put
02:42PM 15 one in in '87, one in in '88, one -- three in in 1989. The
16 regulators told them, you put them in the wrong place. You
17 actually got the ground -- the flow of the groundwater wrong.
18 You need to redo it.

19 It's -- and you can see, not until 2002 -- now they
02:43PM 20 have 200 groundwater -- these groundwater monitoring wells.
21 They're all over the Whittaker site -- right? -- because
22 there's contamination throughout the site. Not everywhere but
23 in a lot of places at this site.

24 And yet despite the memos -- and we've just looked
02:43PM 25 at some of them -- and despite the testimony from Mr. Peloquin

1 who was there, very clearly saying he didn't want groundwater
2 monitoring, the fellow who's been the president of Whittaker
3 the last 20-plus years, denied that they ever had a policy of
4 avoiding groundwater monitoring.

02:43PM

5 But I have never heard of a policy -- and this is
6 from his deposition, sworn testimony just a couple of years
7 ago -- "I have never heard of a policy of Whittaker Corporation
8 to not conduct groundwater monitoring." He could have stopped
9 there. This is Mr. Lardiere. You'll hear from him. "That, I

02:44PM

10 don't believe, ever existed." The evidence will show that is
11 not true.

12 So the evidence will show that -- you'll hear about
13 something called "areas of concern." These are potential, you
14 know, RCRA sites. Where do we think most of the contamination
15 is?

02:44PM

16 And a site assessment, that's where an environmental
17 professional comes in and they sometimes interview current and
18 former employees, they look at data, they try to put together
19 where the most likely areas that this site could have
20 contamination. They usually look at the impoundment areas --
21 right? -- where you have leaky tanks or leaky water that is
22 containing hazardous waste like perchlorate in the water. And
23 so you'll hear about areas of concern.

02:44PM

24 And one of those is the Hula Bowl, waste dump site,
25 surface discharge. Another area, the Burn Valley. And again,

02:45PM

1 these are documented on maps from Whittaker's consultants going
2 back many, many years. East Fork landfill. You'll hear about
3 the East Fork landfill. Waste dump and surface discharge.
4 You'll hear about the ponds at Building 317, 342. Sump septic
02:45PM 5 and surface discharge and several other areas of the Whittaker
6 site.

7 And when you look at the areas where they had these
8 various operations and dumping of VOCs onto the ground, the
9 same areas are where they're finding, their own consultants,
02:45PM 10 VOC impacted areas. That's the hardboard map, except different
11 colors, different consultants have identified these same
12 problem areas now.

13 In other words, the historic memos tell us, you had
14 a problem in the burn pit, you had a problem in the Hula Bowl,
02:46PM 15 you had a problem at Building 317 in the pond there. And then
16 many years later, when they start testing the soil and the
17 groundwater, lo and behold, that's where they're finding these
18 same chemicals.

19 And there are many more areas of concern. At one
02:46PM 20 point it was 77 different areas. There were 350 buildings
21 before they closed the site and started destroying the
22 buildings throughout the site.

23 And again, some of those areas that the evidence
24 will repeatedly talk about, Hula Bowl, burn pits, Burn Valley,
02:46PM 25 the pond at Building 317, the pond at Building 342, and the

1 East Fork dump as well as other landfill areas at this site
2 containing these chemicals that then leech through the
3 groundwater -- leech through the soil down to the groundwater.

02:47PM 4 The evidence will also show -- we touched upon this
5 earlier -- that Mr. Peloquin, while internally saying we have a
6 disaster here, disaster at the Hula Bowl, when it comes to the
7 EPA and the State Department of Toxic Substances Control, he
8 leads a tour. You're going to hear from one of the fellows who
9 was on this tour in July 1987 and then creating what we call
02:47PM 10 evidence, some handwritten notes, Mr. Peloquin describes this
11 safety inspection.

12 And he admits in his handwritten notes and this
13 internal memo, he admits to the vice president and general
14 counsel of Whittaker Corporation that he forgot to show the
02:47PM 15 East Fork landfill to the inspectors, that it slipped his mind
16 to show him the landfills.

17 There are the notes. They're hard to read.
18 Gordon Louttit, that's someone you're going to hear about
19 because he actually met with the regulators at the time. And
02:48PM 20 so this is Mr. Peloquin in these candid internal handwritten
21 notes I'm sure he never thought would show up in a courtroom,
22 "I note that we didn't get to East Fork. Just can't imagine
23 how that happened," exclamation point, exclamation point.
24 "Landfills did not come up. Slipped my mind."

02:48PM 25 (Videotape played, not reported.)

1 MR. RICHARD: Now, what the evidence will tell us is
2 that, when he says slipped his mind, he means I intentionally
3 didn't show it to him because he met with the executives of
4 Whittaker just a month earlier in a meeting that ran from 8:00,
02:49PM 5 8:30 in the morning to 1:00 in the afternoon with the president
6 of Whittaker and with the outside consultant from Wenck. And
7 they talked about these landfill areas being a problem.

8 Before the tour, Mr. Peloquin had investigated the
9 East Fork landfill. He learned that the East Fork landfill had
02:49PM 10 the highest concentration of waste of any of their landfills.
11 And he knew that the president of the company had decided to
12 remove just the large and suspected hazardous materials, leave
13 the rest.

14 How do we know this? We have a memo. The memo is
02:49PM 15 from their outside consultant, Christopher Thompson, June 22nd.
16 Right? So just a few weeks before that tour where certain
17 landfills slipped his mind. "Joe," that's Joe Albrandi who was
18 president of Whittaker at the time, "feels it is not necessary
19 to sift the landfills to the degree we have been presently. He
02:50PM 20 feels we should only remove the large obvious materials and
21 leave the others."

22 And he talks about the meeting ran from 8:30 to
23 approximately 1:00 p.m. The net result of the meeting was
24 what? Was that the total cost for the closure activities for
02:50PM 25 all of these RCRA, non-RCRA, and other projects, all of those

1 areas of potential contamination, addressing those should be
2 pared down from 1.8 million to approximately \$636,000. Cut
3 corners.

02:50PM 4 Once all this is done, fill those holes back in and
5 then leave the landfill as is because it would be too expensive
6 to deal with the contamination back in 1987.

7 "Leaving the moving around of the landfills to the
8 developer is the best way to not incur further costs."

02:51PM 9 He goes on to say in this same memo -- this is a
10 direct quote from the memo -- "There could be problems
11 associated with these landfills in the future." Right. And
12 Whittaker would have some liability. Joe, the president, felt
13 certain there will be some costs associated with these
14 landfills at a later date.

02:51PM 15 And then -- and you see this time and time again in
16 the evidence, Whittaker was a little bit sarcastic about this
17 massive contamination problem they had. Joe made a comment to
18 the effect, "If he cannot sell the property because of a
19 contamination problem, he will write off the loss and will sell
02:51PM 20 the property" -- he left out the word "sell" -- "the property
21 to the EPA or maybe Tammy Bakker." Tammy Bakker was a historic
22 figure at the time in the news right at this time for crying as
23 her husband minister who defrauded the flock went to jail. And
24 so this is obviously not a serious consideration. Right?

02:52PM 25 MR. BLUM: Objection, Your Honor. This is argument.

1 THE COURT: Sustained.

2 And the jury is to disregard the last comment.

3 MR. RICHARD: The same memo goes on, "A discussion
4 was held concerning the cost to close the RCRA units. Joe felt
02:52PM 5 that if we could, we should leave the demolition of the
6 buildings to the purchaser of the property."

7 The evidence will show that they were trying to
8 quickly -- trying to get what's called a clean closure on this
9 property, sell to someone else and hoped that it would be their
02:52PM 10 problem. That's what the evidence shows.

11 In 1988, in response to questions from the EPA,
12 Whittaker sends a memo. They sent it to the EPA and they sent
13 it to Mr. Sorsher. You'll hear from him. He's the fellow who
14 was with the State Department of Toxic Substances Control.
02:53PM 15 He's an environmental engineer. He was a younger man in 1987
16 and 1988, and yet he'll be appearing in this courtroom to talk
17 about this memo.

18 Because Whittaker, in response to further questions,
19 said it only had three landfills. Whittaker claims none of the
02:53PM 20 landfills contain anything hazardous. Haven't had any
21 releases. No corrective action is necessary. That's what
22 Whittaker is saying in 1988, despite internally knowing they
23 had a problem.

24 And then you're going to hear about something called
02:53PM 25 a mystery memo. Mr. Sorsher and others called it that at the

1 time. Because in 1991, three years after Whittaker tells the
2 EPA and Mr. Sorsher three landfills, no hazardous substance at
3 all, no releases, no problem, this mystery memo shows up. He's
4 not sure who mailed it to him. He reads it. There are memos
02:54PM 5 from 1987 that tell us exactly what Whittaker knew.

6 Mr. Sorsher learns in 1991 there are many more
7 landfills than the three they told us about, and those
8 landfills have hazardous substances. The word "hazardous" is
9 all over these memos that were not provided until 1991
02:54PM 10 anonymously.

11 So we won't go through the whole memo now. You'll
12 have a chance when the witnesses talk about it. But the
13 memo -- and again, this is a memo from 1987 that isn't provided
14 to Mr. Sorsher and others until 1991 -- talks about eight
02:54PM 15 landfills had been removed. Five more had been investigated
16 but not removed. Four more areas were listed as requiring
17 further investigation. Mr. Sorsher will testify that doesn't
18 square with telling us that there were just three landfills.

19 The memo goes on to identify that the landfills
02:55PM 20 contain liquid and solid hazardous waste. And they told the
21 regulators no hazardous waste. Hazardous materials found in
22 intact drums or deteriorated broken drums or metal containers.
23 These are memos from their own consultant from 1987.

24 They noted at that time on average about five drums
02:55PM 25 per day have been discovered. Right? They're finding these

1 buried drums, have been discovered over the last month.

2 The conclusion, again from this 1987 memo that
3 Mr. Sorsher didn't receive until 1991, "Further investigation
4 and characterization of the known and potential landfills is
02:56PM 5 necessary in order to feel confident that a good faith effort
6 has been expended to find all wastes on site. The removal of
7 all known landfill wastes is necessary if the facility is to be
8 closed clean."

9 So by -- the evidence will show after that 1991 memo
02:56PM 10 comes out, the regulatory activities increase. As you can
11 imagine, lead to a number of different orders. One of them is
12 the 2002 Substantial Endangerment Order that was in one of the
13 facts the judge read to you. There was a 1994 Consent Order.
14 And these are documents that actually provide very important
02:56PM 15 information about the site, the history of the site, the
16 chemicals, and why these chemicals are dangerous.

17 So this one is called Imminent and Substantial
18 Endangerment Determination and Order and Remedial Action Order.
19 This is Exhibit No. 1 in the case. Gives a brief site history.
02:57PM 20 I won't go through it. But it talks about from 1934 through
21 site closure in 1987, they made igniters, detonators, fuses,
22 boosters, gas generators, explosive bolts, tracer pellets, spin
23 rockets, JATO rockets. Anyway, you get the idea.

24 Materials or mixtures of materials that were used in
02:57PM 25 these activities include, but are not limited to -- they

1 identify the chemicals at issue in this case. Ammonium
2 perchlorate, potassium perchlorate, chlorinated solvents such
3 as -- and this is another name for PCE that we saw in that memo
4 from 1980, perchloroethylene and trichloroethylene.

02:57PM

5 Liability of respondent. Respondent Whittaker is
6 the responsible party. 1996, in an attempt to remove metallic
7 debris from the Burn Valley so that a -- and the Burn Valley is
8 one of the areas on the map there. I won't walk over now but
9 kind of the third large blotch in red.

02:58PM

10 The Burn Valley is the area that -- part of that
11 burn pit where Mr. Luce said in 1980, everything on the plant,
12 all the chemicals end up in the burn pit. Well, in 1996 --
13 there's a reference here in this 2002 order, "In 1996, in an
14 attempt to remove metallic debris from Burn Valley so that a
15 geophysical survey and sampling could be performed, respondent
16 uncovered soil contaminated with nitrate, phosphorous, heavy
17 metals, TCE" -- and they tell us how much TCE just in this one
18 area in the Burn Valley, 41,000 milligrams per kilogram.

02:58PM

19 That's over 4 percent. The experts will say you can
20 practically smell it at that -- I mean, that's a huge amount of
21 TCE found at that time, a very high concentration. And it goes
22 on to mention PCE.

02:58PM

23 The same document. And this is in evidence as
24 Exhibit -- will be in evidence as Exhibit 1. Environmental
25 experts, professionals engineers, folks working in this area,

02:59PM

1 folks handling these substances have known for many years that
2 they have health effects. For example, TCE is classified as a
3 probable human carcinogen. It is an eye irritant and can cause
4 reproductive defects and goes on to say, and liver damage.

02:59PM

5 Right? And liver damage. That's the same harm that
6 Mr. Peloquin back in 1979 was talking about with those vapor
7 degreasers. You put solvents in there, you heat it up, that
8 stuff's dangerous. It can cause liver damage.

03:00PM

9 So moving from the history class to the science
10 class, stay with me. The question is: How did their
11 chemicals -- how did the chlorinated solvents that they put on
12 the ground, that they dumped on the ground, that they released
13 and had those deteriorating barrels and other containers, how
14 did it get from their site to our drinking water? And the
15 short answer is water travels downhill. And yet you'll hear
16 from experts who will explain what that means in terms of
17 groundwater in great detail.

03:00PM

18 And so some of the questions that the experts ask
19 are: Well, what contaminants were detected in and near the
20 drinking water wells -- right? -- those wells that go down in
21 the aquifer and pull up the drinking water? What contaminants
22 are detected at the Whittaker site and in the groundwater
23 beneath the site? And does that groundwater flow to the Saugus
24 wells? And the evidence will show all these things are true.

03:00PM

03:00PM

25 In fact, this is a chart -- I believe one of their

1 own consultants, CDM, now CDM Smith, prepared. It's a slice of
2 the earth. You can see it here. You see the Hula Bowl, so
3 these surface areas. Area 14 is the Burn Valley. And I won't
4 say it's not rocket science, but the chemicals and these
03:01PM 5 chlorinated solvents leech through the soil until they get down
6 to the -- what's called the Saugus formation, that sandy area.
7 And that there's no question but that that same aquifer is
8 connected to our wells, which you see off to the left here.

9 This is another slice of, you know -- what we're
03:01PM 10 looking at here is kind of the underground. You see the blue
11 and the -- the yellow is actually the different levels,
12 sometimes called the hydrostatic units, HSUs, those sandy areas
13 where the water can be found and then extracted. And there's
14 different levels, and they all flow towards the wells that my
03:02PM 15 client relies on.

16 And you'll hear, you know, different evidence about
17 what was going on in the uppermost level and what was going on
18 at S-III. The evidence will show that there are -- unlike a
19 surface river that you can see in just one area, in underground
03:02PM 20 aquifers, there's numerous ways, numerous pathways that those
21 chemicals can travel once they get into the groundwater to
22 contaminate my client's drinking water wells.

23 And you saw this map earlier. There's no question
24 that there's TCE in the groundwater. Here, what we're looking
03:02PM 25 at, the purple dots are the highest concentration of TCE. But

1 it's been detected in many, many areas in the groundwater
2 beneath the Whittaker site.

3 What you won't see is as many detections offsite
4 because they -- there simply haven't been sufficient monitoring
03:03PM 5 wells put in off the Whittaker site. They were reluctant and
6 tried to avoid and did avoid for many years putting in the
7 ground -- groundwater monitoring on their own site. They
8 certainly didn't want to pay for too many groundwater wells
9 offsite.

03:03PM 10 So that means we don't have as much data earlier;
11 right? You'd like to have a lot of groundwater monitoring
12 wells so you can see what's going on down under the ground in
13 the '70s and '80s and '90s. And yet we know that -- and
14 there's no dispute about this -- those aquifers are connected
03:03PM 15 from beneath the Whittaker site to our wells.

16 The groundwater flow generally flows in that
17 westerly, sometimes northwesterly direction. And here, from
18 one of their own experts, the yellow is what's called the -- a
19 perchlorate plume. Right? And it goes all the way out to all
03:03PM 20 the wells that you can see that appear on this map.

21 And then they have blue dots for where they think
22 the TCE contamination is, but they show the -- you know, the
23 blue arrows. And what the science tells us and what the
24 experts will explain, we don't know, now that it's been
03:04PM 25 detected in our wells, how much of the TCE has been migrating

1 off the site and for how many years.

2 So -- and you could see that they're not even
3 sure -- in the northern part here, they don't have any wells,
4 so they're -- they just put question marks.

03:04PM

5 A number of experts have looked at the Whittaker
6 site. You're going to hear that there are some experts
7 initially hired by the Army Corps of Engineers, tried to help
8 figure out what's going on with all this contamination.
9 CH2M Hill. You'll hear about folks at Todd Groundwater. They
10 were hired back in the early 2000s, worked with my client on
11 the perchlorate contamination. You'll hear from Phyllis Stanin
12 to talk about the contamination now and how VOCs travel in
13 groundwater.

03:05PM

14 And you'll also hear from a fellow, Dr. Mark Trudell
15 from Advisian to explain -- it's kind of interesting in terms
16 of groundwater flows generally in one direction. They try to
17 figure out where it's going. But when you put in wells that
18 are pumping 2,000 gallons per minute, that can impact, as you
19 might expect, a certain area of influence. So it gets a little
20 complicated, and the experts will explain some of that to us.

03:05PM

21 All those experts agree that perchlorate and VOCs
22 were often released at the same areas at the Whittaker site.
23 Right? The same operations using those chemicals or, in the
24 case of the burn pit, just being dumped there or burned with
25 residuals. Those contaminants generally travel the same

03:05PM

1 pathways. Right? Perchlorate gets there a little bit faster,
2 but TCE and then PCE aren't far behind.

3 And the experts identify the perchlorate and the
4 VOCs have impacted the water agency's -- "down gradient" is the
03:06PM 5 phrase they use. Down gradient wells. The water is flowing
6 from a higher elevation of the groundwater to lower elevation.

7 And even Whittaker's expert, you're going to hear
8 from Mr. Hokkanen. He agrees that the investigation at the
9 Bermite site determined that perchlorate and VOCs generally
03:06PM 10 were released from the same source areas. They have another
11 expert who actually disagrees with that.

12 Perchlorate and VOCs released from those source
13 areas follow the same migration pathway into the groundwater.
14 Due to the different migration rates of perchlorate and VOCs in
03:06PM 15 groundwater, releases of perchlorate from the source areas have
16 migrated faster and farther. And he acknowledges that
17 perchlorate has impacted the water agency groundwater
18 production wells but doesn't think that the TCE has.

19 So the questions: Is there TCE in the soil at
03:07PM 20 Whittaker? TCE in the groundwater beneath the Whittaker site?
21 TCE in the Saugus wells? And are those aquifers, those
22 underground areas connected? Absolutely.

23 Is the perchlorate in the soil at the Whittaker
24 site? Perchlorate in the groundwater? Perchlorate in the
03:07PM 25 Saugus wells and groundwater from Whittaker? Yes.

1 And the reason perchlorate's important, the evidence
2 will show, when you're talking about VOC contamination is
3 because we know the perchlorate came from the Whittaker site.
4 We know that the -- so it's kind of a tracer chemical. Right?
03:07PM 5 So the perchlorate's theirs. The VOCs came from that site as
6 well.

7 And so that's the question at the end of the day:
8 Is the TCE in these wells and threatening these wells from
9 Whittaker? And the evidence will tell us yes.

03:07PM 10 So -- and the evidence will show that it -- again,
11 it was over many, many years. It wasn't just recently. But
12 those chemicals were released and dumped into the -- the soil
13 and then into the groundwater at Whittaker for many, many
14 years.

03:08PM 15 The evidence will show that Whittaker has over the
16 years had a number of excuses. It's not our contamination.
17 Must be someone else's. But the evidence shows, tells us that
18 their own experts identified 260,000 pounds of TCE and other
19 VOCs. 260,000 pounds in the soil. Identified over 50 heavily
03:08PM 20 contaminated areas. Numerous groundwater pathways identified
21 by the hydrogeologists. He can't just say, oh, it's this one
22 little area. Whittaker's perchlorate tells us that it's
23 Whittaker's VOCs.

24 This map we're looking at here, TCE and groundwater,
03:09PM 25 shows the general direction of the groundwater and how the

1 contaminants in the groundwater would travel.

2 You'll hear and you heard it when the judge read it
3 in the overview of the case, Whittaker has said it's your
4 fault. They want to blame the water agency. You shouldn't
03:09PM 5 have put the wells there. You should have known that we were
6 contaminating even though we weren't telling the regulators.

7 But the leading expert in California, Mr. Slade, is
8 the fellow who designed those wells. They have seals going
9 down 400 feet, meaning that even if there were something
03:09PM 10 spilled on the surface, there are seals until those get down to
11 the much deeper aquifer. So they were sited and built by the
12 leading expert actually in the United States.

13 You'll hear evidence that, well, lately we've been
14 trying to keep the contamination, get it out of the ground.

03:09PM 15 What you won't hear them say is we're not getting all of it out
16 of the groundwater or out of the soil and we didn't get it all
17 before it left our site and got into the groundwater.

18 The evidence will show that these eight or ten wells
19 that they have called containment wells on their thousand-acre
03:10PM 20 site, they're not pumping at 2-, 3-, 4,000 gallons per minute.
21 All ten of them together are pumping at about 300 gallons per
22 minute. What that means is when you have the drinking water
23 wells pulling water out at 2,000, 2500 gallons per minute,
24 that's a much -- that's a much larger amount of water, much
03:10PM 25 bigger pull than their wells that are pulling at 30 gallons per

1 minute. And the evidence will show that most of the
2 contamination had already spread.

03:10PM 3 And then Whittaker said from time to time the
4 evidence will show, hey, it could be worse. Right? There
5 could be higher concentrations. And so, you know, that's what
6 the evidence will show, that it could be worse.

03:11PM 7 The good news is -- the good news is -- I know I've
8 been talking about contamination here a while -- there are ways
9 to treat. And that's why we're here. At the end of the day --
10 this will be my only opportunity now to talk directly to you.
11 The next time I talk to you will be at the end of the case.
12 And so I do want to thank you for your time and attention on
13 behalf of my client. It's important that we spend the time to
14 do this.

03:11PM 15 And at the end of the day, I'll come back and ask
16 you for a verdict in favor of my client so they can pay for
17 groundwater treatment. It's not cheap. It's not cheap. You
18 heard the judge read that they're paying for it on --
19 Whittaker's paying for it on the perchlorate for some of these
03:11PM 20 wells. But there's treatment available to remove these VOCs.

21 So -- and that's what's needed to return this water
22 to its natural state because every citizen in California has
23 the right to pure and safe drinking water.

03:12PM 24 So on behalf of my client, I want to thank you for
25 your time and attention. Thank you.

1 THE COURT: Ladies and gentlemen, before we hear
2 from Whittaker, we are going to take a short break since we've
3 been going for a while.

4 It is now 3:12. So we'll take a 15-minute break.

03:12PM

5 Please do not speak about the case, the people, or
6 the subject matter involved. Continue to keep an open mind.

7 After we do hear the last opening statement, we will
8 break for the day. We may go a little bit over 4:30. But I
9 think it is worthwhile, as I said, to have you hear both

03:12PM

10 opening statements in their entirety.

11 We're going to be in recess for a few minutes here.

12 THE COURTROOM DEPUTY: All rise for the jury.

13 (Out of the presence of the jury:)

14 THE COURT: Please be seated.

03:13PM

15 We're outside the presence of the jury.

16 And make sure the masks do go back on when you're
17 not speaking. And it happens, Mr. Blum, but I need you to
18 check yourself and everyone else because, otherwise, it's very
19 awkward for the Court to have to remind folks.

03:13PM

20 It happens. You don't need to respond to the --

21 MR. BLUM: Your Honor, I actually appreciate the
22 reminder.

23 THE COURT: That's fine.

24 MR. BLUM: Your Honor, I do have one issue, though,
03:13PM 25 before we adjourn.

1 THE COURT: Well, let me turn to one or two things,
2 first, and then very quickly.

03:13PM

3 Mr. Richard, I assume that all of the exhibits that
4 you referred to in the PowerPoint are stipulated exhibits. Is
5 that correct?

6 MR. RICHARD: Yes, Your Honor.

03:14PM

7 THE COURT: I am going to order you, before you
8 leave today, you have to have someone send to the Court to the
9 chambers' e-mail the PowerPoint version of your PowerPoint. I
10 don't want it in PDF form. I want it in PPT or PPTX, whatever
11 it is, the actual PowerPoint version.

12 The same will apply to Mr. Blum, if you have that.
13 And remember, you are to copy each other. So you'll all have a
14 copy of your PowerPoints after they have been delivered.

03:14PM

15 I take it you would answer the same way. Whatever
16 is in your PowerPoint that you're flashing up is going to be a
17 stipulated exhibit, not one that's in dispute?

03:14PM

18 MR. BLUM: Your Honor, we've either exchanged it or
19 we've discussed it. And I don't have an objection to anything
20 that was used there. I'm assuming that everything was
21 stipulated to. But it looked like it to me.

22 THE COURT: All right.

03:15PM

23 MR. RICHARD: I -- I'm not understanding the answer
24 to Your Honor's question. We've had a list of -- of exhibits
25 that are either stipulated or not stipulated.

1 THE COURT: I'm not going to spend a lot of time on
2 this.

3 MR. BLUM: I'm not complaining, Your Honor.

4 THE COURT: No, no.

03:15PM 5 MR. RICHARD: I just want to make sure --

6 THE COURT: Mr. Richard and Mr. Blum, when you hear
7 the Court speaking, you both stop. Hard stop. And you do not
8 speak to each other. You speak to the Court.

9 Now, Mr. Blum, if you provide to the jury in your
03:15PM 10 PowerPoint any exhibit that's not been stipulated to and
11 there's an objection, you will not be able to use your
12 PowerPoint presentation.

13 MR. BLUM: I understand.

14 THE COURT: And if, in fact, it turns out that
03:15PM 15 there's an objection to a stipulated document and I shut down
16 the PowerPoint presentation, there's going to be a serious
17 sanction that's going to get imposed by any abusive lawyer who
18 engages in that type of tactic. That's all I'm going to say on
19 that.

03:15PM 20 I'll let you address whatever you're going to
21 address in a moment. You may be seated.

22 With regard to the stipulation, the plaintiff is
23 ordered to provide a document, which will be the exhibit next
24 in order, and you'll provide that to my courtroom deputy
03:16PM 25 tomorrow morning at 8:00 o'clock, the stipulation that contains

1 all of the facts.

2 And I'll leave it to the lawyers to consider whether
3 you want to provide that list of stipulations to the jury at
4 this point. And if you do, you should make sufficient copies
03:16PM 5 for the jury.

6 So I'm giving you an option, not a dictate. If you
7 want, it might be useful for the jury to actually have with
8 them, just like they have their notebooks, the stipulations.
9 If anyone objects to that, it's going to simply be a
03:16PM 10 stipulation that they will receive at the end of the case along
11 with all of the other exhibits.

12 Mr. Blum.

13 MR. BLUM: Your Honor, just logistically, our
14 PowerPoint may be too large to send. Can we give Mr. Cruz a --
03:17PM 15 hand him a stick with it on it at the end of today?

16 THE COURT: That's fine. If you -- if you want to
17 put it on a flash drive, that's equally fine as well.

18 MR. BLUM: The issue I want to bring up, I did not
19 object during the opening because there was no need for me to
03:17PM 20 emphasize it. The -- during the opening, Mr. Richard argued
21 that Whittaker is a subsidiary of a very large corporation
22 called Meggitt.

23 THE COURT: I heard it.

24 MR. BLUM: That's improper. It has no relevancy to
03:17PM 25 the issue of liability. The only purpose would go to the

1 monetary position of Whittaker, which I don't think it is even
2 relevant to. And you have bifurcated those issues.

3 And I'm not asking for an admonishment of plaintiff.
4 What I'm asking for the Court to instruct the plaintiff that
03:17PM 5 that is -- that they got their one -- they got their one swing.

6 THE COURT: Mr. Richard?

7 MR. RICHARD: Yes, Your Honor. Mr. Lardiere will be
8 testifying and will explain that he works for Meggitt as well
9 as -- he's employed by Meggitt. I'm going to ask him what
03:18PM 10 Meggitt is. They're an aerospace company. I'm not going to go
11 into what their 10-K is at this point or whatever the
12 equivalent is in England. But that was the only point, is
13 to -- the evidence will show that's who he works for.

14 THE COURT: Mr. Blum, is there an objection to
03:18PM 15 eliciting the evidence as to who he works for without going
16 into any detail in the way that he characterized it?

17 MR. BLUM: I don't see the relevancy of it.

18 THE COURT: Is there -- is there any harm in saying
19 who he works for?

03:18PM 20 MR. BLUM: If all he says, "Do you work for
21 Meggitt?" and Mr. Lardiere says, "Yes," that's fine.

22 THE COURT: I'm instructing you not to go beyond.
23 You can ask who he works for. But beyond that, you cannot
24 proceed.

03:18PM 25 Is there anything else before we break?

1 MR. BLUM: No, Your Honor.

2 THE COURT: Then at 3:30, see everyone then.

3 (Break taken.)

4 (In the presence of the jury:)

03:32PM

5 THE COURT: Back on the record in Santa Clarita
6 Valley Water versus Whittaker. And everyone is present who was
7 present before the break.

8 And it is now time for Whittaker's opening
9 statement. And, Mr. Blum, you may proceed when you're ready.

03:33PM

10 MR. BLUM: Thank you, Your Honor.

11 Good afternoon, everybody. It may not come as a big
12 surprise, but we disagree with what you heard for the last hour
13 and a half. But before I talk about where the disagreements
14 are, I want to talk a little bit about what we do agree about.

03:33PM

15 And that's this, one of the stipulated facts.

16 We are responsible for the perchlorate
17 contamination. I will say it again. Whittaker is responsible
18 for the perchlorate contamination. Whittaker -- as a result,
19 Whittaker has paid tens of millions of dollars to set up
03:34PM 20 treatment plants for Saugus 1 and Saugus 2 and for V-201.

21 The other well at issue here, as you heard of, is
22 V-205. It is contaminated with perchlorate. And Whittaker is
23 responsible for the perchlorate. Not an issue of contention.

03:34PM

24 What is in contention as to V-205 is the cost of the
25 system to treat the perchlorate.

1 Now, these costs, we're going to be able to show,
2 are not unknown. We've paid for systems before. We built the
3 system or we paid for the system on V-201. We paid for other
4 wells, such as the system at Q2, which you're going to hear
03:34PM 5 about. We know what the costs are. And what the -- what
6 you're going to hear is the plaintiff's expert, instead of
7 looking at the actual costs, came up with theory upon theory
8 and contingencies upon contingencies, to double, triple, and
9 quadruple the price.

03:35PM 10 What the evidence will show is that instead of
11 asking how much did the watch cost yesterday, plaintiff's
12 expert decided to add up all of the parts of the watch and
13 thereby estimate what it would cost tomorrow, ignoring the
14 costs of yesterday.

03:35PM 15 Now, what we disagree with and what the trial is
16 mostly about is volatile organic compounds, VOCs.

17 Now, the first thing to understand, there are
18 hundreds of different VOCs. You can't and -- you can't just
19 say there was VOC contamination. There is DCE which is a VOC,
03:35PM 20 there is chloroform which is a VOC, there is TCE which is a
21 VOC, there is PCE which is a VOC, and there is TCA. They're
22 all different. And the reason this is important is because of
23 context.

24 And in order to understand the context, you need to
03:36PM 25 understand about the site.

1 Now, Whittaker occupied the site beginning in -- you
2 see, excuse me, in 1967. The site had operations going on it
3 back to the Gold Rush. When they -- when Whittaker closed it
4 down, they found a -- a building that was used to manufacture
03:36PM 5 dynamite during the Gold Rush. There have been lots of
6 different things manufactured there.

7 For instance, if you look -- from 1934 to 1942,
8 Halifax Explosives and E.P. Halliburton manufactured fireworks.
9 Whittaker never manufactured fireworks.

03:37PM 10 THE COURT: Mr. Blum, I do need you to speak into
11 the microphone.

12 MR. BLUM: I'm sorry.

13 Whittaker never manufactured fireworks. And the
14 reason that's important is because what the evidence will show,
03:37PM 15 that when Whittaker cleaned out the Hula Bowl, guess what they
16 found. Fireworks.

17 There is location upon location upon location where
18 the evidence will be clear that what was found there had
19 nothing to do with Whittaker. But Whittaker is the one that
03:37PM 20 ended up cleaning it up, partly because the party who they sold
21 the land to -- and there will be no evidence that there was any
22 fraud or misrepresentations in that sale -- went bankrupt, and
23 Whittaker had to step back in to finish the cleanup.

24 The other context that is critical is the fact that
03:37PM 25 the regulations and the rules for dealing with what we now

1 consider to be hazardous wastes had changed dramatically. Take
2 perchlorate, for instance.

03:38PM 3 Every expert in this case is going to say that
4 before 1997, there was no reason to think that perchlorate was
5 a problem in groundwater. And in 1997, the operations had
6 been -- had been closed for a decade. That was because
7 perchlorate was only thought to be an accelerant, not for
8 bombs, not for things to go boom but for fuel of the rockets.
9 And these rockets were manufactured on the site going back to
03:38PM 10 the 1930s.

11 Fireworks use perchlorate because we know fireworks
12 go up in the air. The Bermite company manufactured rockets and
13 JATO rockets using perchlorate. VOCs, specifically TCE, was
14 used at the site beginning at least in World War II and even
03:39PM 15 earlier than that.

16 So when you say -- so when Mr. Hughto or Dr. Hughto
17 who is their expert on, I guess, custom and practice, for lack
18 of a better word, says we found TCE, the evidence will show
19 that that doesn't mean that it was Whittaker that put the TCE
03:39PM 20 there. And there will be no connecting tissue here. It is a
21 skeleton without the connecting tissue to show that it was
22 Whittaker that disposed of the TCE.

23 In fact, this is sort of the irony of plaintiff's
24 argument. All of the evidence they have that they will produce
03:39PM 25 about how bad Whittaker did is the result of investigations

1 done by Whittaker. You heard evidence that they found a drum
2 that somebody said was full of TCE or had TCE in it. Well, who
3 do you think found the drum? Whittaker. And who do you think
4 disposed of the drum properly? Whittaker.

03:40PM

5 Dr. Hughto is going to cite to report after report
6 after report that he's going to use to say contamination took
7 place. It was all reports done by Whittaker. And the memos
8 that you saw have to be understood in the regulatory context of
9 the time.

03:40PM

10 What Dr. Hughto will talk about and also
11 Gaynor Dawson who is the expert for the defendant we're going
12 to talk about, that all the rules relating to hazardous waste
13 changed in 1976.

03:41PM

14 In 1976, the Federal Government passed a law that
15 Mr. Richard referred to as RCRA, the Resource Conservation and
16 Recovery Act. For the first time in the history of this
17 country, the transportation, disposal, and handling of
18 hazardous wastes were regulated. The first time.

03:41PM

19 Now, while the law was passed in 1976, there were no
20 regulations. So in reality, operators of facilities such as
21 Whittaker really didn't know all the rules. They knew that
22 again there was a skeleton that said RCRA. But as to what you
23 needed to do, they didn't know. That changed in 1980. And
24 that's when EPA for the first time promulgated the rules.

03:41PM

25 And these memos that you see, notice they're 1980,

1 1979, 1981. What they are is the memos from a company trying
2 to come to grips with a changing landscape. With rules that --
3 for instance, it was legal to dispose of solvents on the ground
4 until 1983 when the land ban rules came in.

03:42PM

5 In 1983, Whittaker had to change the way that
6 solvents were dealt with. Beforehand, what they would do is
7 they would burn them because it was mostly on rags and stuff.
8 There were solvents they didn't know about in the degreasers.
9 We're going to talk about that in a moment.

03:42PM

10 Now, even the burning of these rags in the burn pit,
11 it was done with permits from the Los Angeles County Fire
12 Department. It was done under the auspices of the Department
13 of Defense because remember what Whittaker was manufacturing.
14 They weren't manufacturing fireworks. They were manufacturing

03:43PM

15 Sparrow and Chaparral air-to-air missiles primarily for the
16 Air Force and for the Army. These were top-secret military
17 munitions. And a lot of the manufacturing took place during
18 the Vietnam War.

03:43PM

19 The Department of Defense doesn't just say
20 manufacture this stuff and send it to us and then we'll try to,
21 you know, fire it to shoot down an enemy plane. There were
22 inspectors on site at the hog-out operations we talked about,
23 for instance, having to wash the stuff out, that was done
24 because the DOD said it had to be done.

03:43PM

25 The reason it was burned was because you couldn't

1 take the spent fuel and send it to a landfill because it was an
2 issue of national security. The defense department didn't want
3 everybody to know what was in the fuel for these rockets.

4 That's what -- that's how they were done.

03:44PM

5 And they were done and they had one way to do it.
6 And then when RCRA came into place, they had to change.

7 So, yeah, you have these memos. I would say the
8 evidence is going to show these are the memos of a company
9 trying to deal with the changing law.

03:44PM

10 Now, some of the pieces of evidence that you saw
11 need to be put within the context. For instance, you saw a
12 2002 memo, it had a list. I think it was about 25,
13 30 different sites and for different types of contamination at
14 the sites. Most of the contamination at those sites had
15 nothing to do with this case.

03:44PM

16 This case is about two chemicals -- TCE and
17 perchlorate and a minor one of PCE. They were about -- for
18 instance, the Hula Bowl talked about oil, it talked about
19 debris. That's not a problem in this case.

03:45PM

20 The one that listed -- and the ones that listed all
21 that, it was a historical document dealing with where things
22 had been found. It wasn't about recent releases. It wasn't
23 about contamination that was caused by Whittaker dumping. It
24 was a memo about Whittaker -- what Whittaker found once they
25 had to basically determine and assess what was on a site in

03:45PM

1 which explosives, munitions, and fireworks had been
2 manufactured for over a century. That's what that memo is
3 about.

03:45PM 4 And it wasn't -- and this is one of the biggest
5 issues that we're going to talk about. It wasn't about the
6 contamination and what the plaintiffs are referring to as the
7 requirement of pure groundwater because that's a litigation
8 produced rationale. What the evidence is going to overwhelming
9 show, that the plaintiffs never cared about pure groundwater
03:46PM 10 until this litigation.

11 There is something in the rules with this new set of
12 laws that started with RCRA. There's a law called the Safe
13 Water Drinking Act. And the Safe Water Drinking Act has
14 this -- something called maximum contaminant levels, MCLs.
03:46PM 15 California has their own. And MCL is the number under which
16 drinking water has to be for chemicals. For instance, for TCE,
17 it's 5 parts per billion. For perchlorate, I think it's
18 6 parts per billion. And I think it's the same for TCA and PCE
19 at 5 parts per billion.

03:46PM 20 Now, even after the case was filed, the plaintiff
21 knowingly served water to its customers at least 10 percent of
22 the time that contained VOCs. They didn't warn their customers
23 about it. They didn't say, hey, this is a risk. Be careful.
24 In fact, you're going to hear that they made representations
03:47PM 25 that the water was safe and that the only time they've argued

1 that it wasn't is here in this courtroom.

2 Don't take my word for it. This is James --
3 Jim Leserman. Mr. Leserman is a senior engineer for the
4 plaintiff.

03:47PM

5 (Videotape played, not reported.)

6 MR. BLUM: Pure water. But this is the rule that
7 plaintiff actually operates from --

8 THE COURT: Mr. Blum, to the microphone.

03:48PM

9 MR. BLUM: This is the rule that the evidence will
10 show plaintiff operates from. If the numbers are below the
11 MCLs, which, by the way, for VOCs at every one of those wells,
12 it was below the MCLs, for V-201, V-205, Saugus 1, Saugus 2.
13 In fact, there's never been an offsite well that's involved in
14 this case in which the VOC readings were above the MCL. Now,
15 what does that mean to the plaintiff?

03:48PM

16 Excuse me.

17 Well, what Mr. Leserman will testify to is that, if
18 it's below the MCL, the policy of the plaintiff is to serve the
19 water. Again, the evidence will show that, if it's below the
20 MCL, the policy of the plaintiff is to serve the water. The
21 perchlorate is now below the MCLs because we have paid for the
22 treatment facilities, and the VOCs have never been above the
23 MCLs.

03:49PM

24 The other issue will be -- there's a couple other
25 issues. One, there's also something called the MCL equivalent,

03:49PM

1 and that's the numbers set by what's called the Department of
2 Drinking Water. And what they say, if you accumulate all of
3 the contaminants in the water and if the number is below 1 in
4 the way they calculate it, it's safe. Guess what. It's
03:49PM 5 below 1.

6 The other thing is let's -- what the evidence will
7 show is that the Department of Toxic Substance Control which
8 controls the remediation onsite and offsite, DTSC, as
9 Mr. Richard said, has decided that the offsite contamination of
03:50PM 10 VOCs requires no remediation. In other words, because of the
11 numbers being below the MCLs, there is no need to treat offsite
12 VOC contamination. These are the facts which are not in
13 dispute.

14 So that takes us to the issue. Let's talk about
03:50PM 15 TCE. Remember, lots of different VOCs. But the one that
16 plaintiff is saying we've contaminated their wells with is TCE.

17 Now, I want to talk about another chemical, TCA.
18 Why do I want to talk about TCA? Because this goes back to
19 Dr. Hughto who, again, is not our expert. He's their expert.

03:51PM 20 And what does he say about the use of TCA? You will see -- if
21 you look at late 1960 on it, Dr. Hughto will testify -- it is
22 what he said in his report -- that Whittaker initially changed
23 from TCE to TCA in the late 1960s. Ms. Stanin, who's also an
24 expert for plaintiff, will say the same thing.

03:51PM 25 Dr. Hughto -- we will show the documents that

1 Dr. Hughto relied upon, and we will even show an article
2 written in a peer reviewed journal that Dr. Hughto relied on
3 where it says that the switchover from TCE to TCA took place in
4 1966.

03:52PM

5 Whittaker's use of TCE was minimal, maybe a year or
6 two at the beginning. But the predominant solvent used by
7 Whittaker was TCA. And if plaintiff is right and Whittaker was
8 this environmental devil, TCA should be all over the site. It
9 should be in every one of their drinking water wells. But what
10 do you find?

03:52PM

11 First, the evidence will show that, when they --
12 when Whittaker did an inventory, computerized inventory, for --
13 for the Water Board, they didn't find any TCE at the site.
14 They found TCA. The evidence will also show that there is
15 no -- and I want to use the word again -- there is no TCA
16 contamination in any of the wells.

03:52PM

17 All of the wells at issue, Saugus 1, Saugus 2,
18 V-201, V-205, never have they found TCA. They found TCE.
19 Different chemical. Not the one that was used. No TCA has
20 been found.

03:53PM

21 So one of the reasons -- and one of the other
22 reasons why we don't find -- sorry. Let me slow down.

23 One of the issues is was there enough time for the
24 TCE to have traveled from the Whittaker site to the wells
25 starting in the late -- starting in 1967 or '68 when Whittaker

03:53PM

1 started at the site?

2 So that's a tough question. But we have information
3 to use to make these estimates. The first thing we know -- and
4 this is because it's a stipulated fact -- is that perchlorate
03:54PM 5 and VOC released from the source areas on the site followed the
6 same migration pathway. Now, why is that important? Because
7 we can use perchlorate as a tracer, such as we know from the
8 burn area, according to Ms. Stanin, it's approximately
9 10,000 feet to the Saugus wells and we know that perchlorate
03:54PM 10 made it there. And since they follow the same pathways, if the
11 TCE got there, it would have had to follow the same pathway
12 that's been stipulated to.

13 We also know -- because this is, again, a stipulated
14 fact -- that releases of perchlorate from the source areas have
03:54PM 15 mig- -- migrate faster, two-and-a-half times faster.

16 Now, why is that important? Because we can
17 calculate based on that the approximate time it would take for
18 both of them to move 10,000 feet in the groundwater. The only
19 other variable that is missing is what's the speed of the
03:55PM 20 groundwater? And that we get from the report of Ms. Stanin.
21 She says -- well, you know what? Let me back up.

22 There's a reason why, a chemical reason why, one
23 moves faster than the other, why TCE moves much slower. And
24 the reason why is because there is a -- something called fate
03:55PM 25 and transport. You're going to hear that maybe somewhat. And

1 what fate and transport means is how chemicals move in the
2 ground. So when you talk about a study of fate and transport
3 for TCE versus perchlorate, you're taking a look at how they
4 move.

03:55PM

5 And chemicals have attraction to other things. For
6 instance, VOCs are really, really attracted to carbon. They
7 love carbon. And what happens is, as they move past carbon,
8 they want to move towards the carbon, and that slows them down.
9 Perchlorate couldn't care less about carbon.

03:56PM

10 So you see on the left this is what happens when
11 perchlorate moves past soil. It just doesn't stop. It moves
12 with the speed of groundwater. When VOCs do it, it moves slow
13 because it wants to grab on to the carbon.

03:56PM

14 With this chemistry, we go, then, to Ms. Stanin's
15 report. And she estimated that water travels at .87 linear
16 feet per year. And we can do the math. 10,000 feet at
17 .87 feet per year equals about 11,500 days, or 31.5 years. So
18 it takes about 31.5 years for perchlorate to move 10,000 feet.
19 But how about VOCs? Well, it's basically the same number times
20 2.5, or 78.75 years.

03:57PM

21 Now, what does that mean? What it means is, for TCE
22 to have moved to the Saugus wells and then made it there in
23 2010, which is when it was first discovered, TCE would have had
24 to have left the Burn Valley before 1931, or 36 years before
25 Whittaker occupied the site.

03:57PM

1 The physics, the chemistry, and the math just don't
2 work. But what does work is the fact that we know the TCE was
3 used before Whittaker ever got there.

03:58PM 4 Now, when you get down to the heart of it and you
5 talk to plaintiff's experts about what -- what is their
6 opinions, they recognize all of these problems. And in the
7 end, for each of the wells involved, at least one of their
8 experts have said, I don't know if Whittaker is the source of
9 the VOCs -- I'm sorry -- the TCE in particular.

03:58PM 10 Now, these are the four wells, and you can see in
11 black is the Whittaker site. Let's talk about each of the
12 wells and each of the experts.

13 This is the first one, Benjamin Lechler. Now,
14 Mr. Lechler was -- worked for a company called CH2M Hill, and
03:58PM 15 you can see and you heard in the opening of plaintiff that they
16 were hired by the Army Corps of Engineers.

17 What -- and he did a report, and that report was
18 written and published in 2015. And he concluded in the report
19 that, based on the current evidence and without what he
03:59PM 20 believed was required additional investigation, he could not
21 conclude that Whittaker was the source of the VOC -- of the TCE
22 or the other VOCs found in Saugus 1 and Saugus 2. His
23 recommended investigation to the plaintiff was never done.
24 They didn't do it. And we're going to talk about why in a
03:59PM 25 moment.

1 This is the other expert, Dr. Mark Trudell.

2 Dr. Trudell, similar to Mr. Lechler, said he couldn't conclude
3 whether or not Whittaker was the source of the VOCs found in
4 Saugus 2. He also said, as to V-201 and V-205, he didn't know
03:59PM 5 if they were the source. And what experts talk about is he
6 could not conclude to a reasonable degree of scientific
7 certainty. That's the key. None of the experts can. Why?

8 This would be a very simple case if the only source
9 of these VOCs was Whittaker. We're the only source. Of course
04:00PM 10 it's us. But everybody pretty much agrees that there's other
11 sources out there.

12 For instance, there's some wells called the DW and
13 mall wells. This is where they are in relation to V-201 and
14 V-205. You will hear from Dr. Trudell that it's his opinion
04:00PM 15 that Whittaker is not the source of the VOCs found there.
16 Again, this is plaintiff's expert. There's also some other
17 wells. It's called AL-12B. And AL-12B is an alluvial well
18 that's right next to -- I believe it's Saugus 2.

19 Now, in the permit application that the plaintiffs
04:01PM 20 had submitted for the -- operate the well -- I'm sorry --
21 operate the wells at V -- Saugus 1 and Saugus 2, after the
22 Saugus perchlorate treatment plant was put into operation,
23 there was attached to that application, that permit, an
24 engineering report done by the DDW. And this -- and this is in
04:01PM 25 evidence. This is a stipulated document.

1 In that, you see the engineering report. And we're
2 going to look at -- specifically at page 10. And you can see
3 it's Exhibit 96.34. So, first, prepared by Susan Brownstein as
4 an associate sanitary engineer, reviewed and approved by
04:01PM 5 Jeff O'Keefe who is the district engineer for the Metropolitan
6 District and now I think he's the chief operating officer for
7 the local DDW. And what does the -- what does this government
8 approved report say?

9 It says -- the first line talks about TCE and PCE
04:02PM 10 and perchlorate have been detected at certain concentrations
11 and monitoring well AL-12B. This well has been identified as a
12 sentinel well. And the kicker here is the TCE and PCE
13 contamination at this location is not believed to have
14 originated at the Whittaker-Bermite site. It's not us. That's
04:02PM 15 the Government.

16 You're also going to hear about evidence of a -- of
17 what is one of the sources of the contamination. That's called
18 the Saugus Industrial Center, or SIC. You see in red that's
19 where SIC is in relation to the Bermite site -- I'm sorry -- in
04:02PM 20 relation to the site. That's just a bigger blow-up of it.
21 Same place. But you can see how close it is to Saugus 1 and
22 Saugus 2.

23 And you can see all of the VOC contamination that
24 was found at this site. But I want to focus on one piece
04:03PM 25 that's in the square here, chloroform and TCE, both chemicals

1 that were found as contaminants in one of the Saugus wells.

2 Now, the other one -- and here's the map of
3 chloroform. You see these white dots that you see all over the
4 left portion of the Whittaker site? It's non-detects. It
04:03PM 5 means no chloroform was found. Chloroform is not migrating off
6 the Whittaker site. They don't find it. But they do find it
7 at SIC. And sort of the magic of why SIC is most likely the
8 source is because of the specific geology that you have right
9 off the SIC site.

04:04PM 10 Most times, you know, when you've had groundwater --
11 groundwater is like a river. I mean, it's not -- it's a river
12 that flows through soil and things of that sort. But it flows
13 with gravity, and usually it flows very slow because the --
14 because the elevations don't change usually that fast.

04:04PM 15 But there's a geological anomaly right on the border
16 where SIC is, and in that case, instead of a gradual move, it's
17 much more like a waterfall. And what it does is it makes a
18 60-degree drop towards, you can see, Saugus 2 and Saugus 1.
19 And that's how the contamination got there, the chloroform and
04:04PM 20 the TCE.

21 But we don't have to stop with SIC. One of the
22 other issues is there is -- it's not the only solvent found in
23 Saugus 1 and Saugus 2 is TCE. There's another solvent, DCE.
24 Now, if we look at it, this is, again, sort of the same map we
04:05PM 25 found for chloroform. You find some DCE on the Whittaker site.

1 But as you move to the boundary and you move towards Saugus 1
2 and Saugus 2, you don't find DCE. And what does that mean?
3 Let's ask plaintiff's expert again.

04:05PM 4 This is -- sorry. This is Phyllis Stanin, one of
5 the experts. And she's going to say, I don't know what the
6 source is of the DCE. I don't know. Well, if the DCE isn't
7 from Whittaker, what else isn't? And based on all of the
8 evidence, it's going -- you're going to find that it's not us.

04:06PM 9 The last one is chloroform. We talked about this
10 some. We don't have to go over it again.

11 Okay. Why are so many of plaintiff's experts having
12 to say I don't know? And that's because plaintiff has taken
13 the position to litigate this case rather than investigate the
14 contamination.

04:06PM 15 Context for this. We know that in October of -- on
16 October 9, 2010, the Department of Public Health was concerned
17 about the VOCs because it had just been found in some of the
18 wells. And they then asked the plaintiff to investigate it.
19 The internal memos will show that what plaintiff's reaction was
04:06PM 20 is, well, I'm not sure we want to investigate this because
21 Whittaker may not be the cause.

22 They delayed and delayed and delayed investigating.
23 After more pressure from the regulators, they put out what's
24 called an RFP, request for proposal, in October of 2013. One
04:07PM 25 of the responses they got back was from Todd Engineering, which

1 is the company that Phyllis Stanin worked for. And what they
2 said in their response was, well, we'll do the investigation,
3 but you have to understand Whittaker may not be the source.
4 Again, they delayed.

04:07PM

5 Finally, in 2015, they hired Mr. Lechler at
6 CH2M Hill. Now, the proposal that they entered into with
7 CH2M Hill and Mr. Lechler was going to be two phases of an
8 investigation. The first phase was actually done, but that
9 phase was only to determine the potential sources, not the

04:08PM

10 actual sources, the potential sources and the potential
11 pathways, not the real pathways but the potential pathways.

12 Mr. Lechler did that report. He was the author.
13 And you are going to hear from him that he never concluded in
14 that report that Whittaker was the source. He says they were a
15 likely or potential source as well as SIC being a likely or
16 potential source. And to determine whether or not Whittaker --
17 or SIC was the source, a further investigation had to be done,
18 which was supposed to be Phase 2. Phase 2 was never done.

04:08PM

19 And you will hear time after time in reports to the
20 government and in press releases that SCVWA representing the
21 report that was done by Mr. Lechler is one that determined that
22 Whittaker was a likely source, not a potential source in which
23 he wasn't sure of but a likely source.

04:08PM

24 And the reason why they didn't do the second phase
25 according to Mr. Leserman, who was in on the discussions, was

04:09PM

1 because they would rather litigate.

2 (Videotape played, not reported.)

3 MR. BLUM: And the attorneys was the Nossaman firm,
4 the same firm that's representing him now.

04:10PM 5 All right. But are we -- but there's also
6 evidence -- affirmative evidence that Whittaker is not the
7 source of the VOCs. And what is that evidence?

8 First, remember one of the stipulated facts, both
9 VOCs and perchlorate generally follow the same paths.

04:10PM 10 Now, Dr. Trudell will actually go beyond that. He
11 will say, at least he did in his report, that they travel along
12 the exact -- let me repeat that. He will testify that in his
13 report he stated that they travel along the exact same path.

14 Well, if that's true and the VOCs from Whittaker have moved
04:11PM 15 from the site to the wells where you see perchlorate, you
16 should see VOCs because they traveled along the same path. And
17 if they both got there, if they both are contaminated from
18 Whittaker, it should be coextensive.

19 Now, what the plaintiff -- or what the plaintiff's
04:11PM 20 expert is now going to say, well, that's really the exact same
21 path. It's only the exact same path where we find the VOCs
22 with the perchlorate. And where we don't find them, well, it
23 wasn't the same path. So apparently -- and what we'll show is
24 that Dr. Trudell no longer uses the definition of "exact" that
04:11PM 25 we use.

1 So one of the reason -- one of the reasons we know
2 this is because, when you actually do look at these pathways,
3 it's not exact, and you don't find them both.

4 So this is -- this shows some of the wells on the
04:12PM 5 Whittaker site. And these wells is where you found VOCs, TCEs
6 specifically, in the groundwater. But when you look at the
7 boundary wells, there is almost no VOCs found. And let me talk
8 about a sleight of hand here. You see the green on the left
9 edge. There's three wells of green right next to each other.

04:12PM 10 Now, those are non-detect. When plaintiff shows you
11 these wells, they're going to be -- they're going to say, well,
12 there were detections there. Well, this is the -- this is the
13 reality. There have been almost a hundred groundwater tests
14 done on these wells since they were implemented. In two or
04:12PM 15 three of them, they found extremely low levels of TCE. In over
16 95 of them, they found no TCE, yet they found perchlorate. And
17 what the plaintiff will continuously argue, it was there. And
18 they will continually show you maps that show detections of
19 three out of a hundred.

04:13PM 20 The other reasons we know is that Whittaker,
21 contrary to the position that the plaintiffs are taking, hasn't
22 been sitting on their hands. What you're going to see is a
23 continual effort by Whittaker to remediate the site. And
24 remember, they're doing it in the mid '80s where perchlorate
04:13PM 25 hasn't even been regulated. There wasn't even an MCL for --

1 for TCE until -- I believe it was the late '80s after its
2 operations had ceased.

3 The land ban didn't take place until 1983. We're
4 going to show you an inspection report by the Regional Water
04:14PM 5 Quality Control Board that says there was no requirement to
6 monitor it, to make monitoring wells. And that -- that in
7 1985, the production well at the Whittaker site was tested by
8 the regional board, and they did find VOCs in the wells.

9 And at that point, there were issues relating to
04:14PM 10 monitoring wells. And there was discussion with EPA, and EPA
11 and Whittaker entered into an agreement about monitoring wells.

12 But what EPA said is, the first thing we want you to
13 do is not go out and test for VOCs. We need to know about
14 basically the physical nature of these aquifers. How deep are
04:14PM 15 they? What's the groundwater directions? And once you get
16 that information, then we'll talk about monitoring wells.

17 By that time, Whittaker had sold the property, and
18 the new owners told the regulators, we'll take over. The
19 problem is they didn't. And they eventually went bankrupt, and
04:15PM 20 then Whittaker had to step back in. And that Imminent
21 Substantial Endangerment Order that plaintiff showed you, the
22 reason they did that order was because of the bankruptcy of the
23 current owner and Whittaker's agreement to step back in and
24 take over the remediation.

04:15PM 25 And that's why you have that flat curve about wells

1 in the late '90s and why -- as it gets to 2001 and 2002, that's
2 when Whittaker took over. That's when we did what we were
3 supposed to do. And now we've done such a good job at that
4 site that we're getting what's called closure letters from
04:16PM 5 DTSC. It means we've done what we had to do. We cleaned up
6 the soil. We've been using what's called vapor extraction
7 systems to take the gas out of it because, you know, VOCs,
8 they're volatile. So you put these vacuums down, and you suck
9 up the gas. We're remediating the water.

04:16PM 10 So, again, this is the same thing. We saw this one
11 before, but let's look at the next slide. And what you have
12 here is the powder blue squares, this is the groundwater
13 extraction systems. And what these do is -- because they're
14 down there pumping water, it has an effect on where groundwater
04:16PM 15 is moving.

16 So groundwater wants to move downhill. Because of
17 these extraction systems, it locally actually moves uphill back
18 towards the system. It's sort of like taking a straw and
19 putting it down a milkshake and sucking up. The milkshake
04:16PM 20 comes up. It moves with the suction.

21 That's the system we've employed, and that's been
22 basically preventing the -- the chemicals, specifically the
23 VOCs, from moving.

24 And it's because what happened was this -- well,
04:17PM 25 remember, perchlorate moves faster. Perchlorate moves fast

1 enough, so it got off the site before we could put the
2 remediation system in. But when we installed the remediation
3 system, because of the slow-moving nature, it was able to catch
4 the VOCs.

04:17PM

5 Excuse me. Your Honor, may I have a moment?

6 THE COURT: Yes.

7 MR. BLUM: All right. There's -- technology is
8 great, Your Honor, when it works.

04:18PM

9 Let me move on, and we'll catch up with the
10 PowerPoint.

11 The -- there's other reasons why Whittaker is not
12 the source. One of them is there's other potential sources of
13 VOCs. We know that from the plaintiff, and you're going to see
14 document after document that the plaintiffs released to the
15 public where they talk about other potential VOC sources.

04:19PM

16 They're also going to refer to the VOC contamination
17 as, quote, "trace," not significant at all, trace
18 contamination. They're going to tell you and they're going to
19 tell the public that it's safe to drink, that there's no
20 problem at all.

04:19PM

21 All right. I've just got to find the --

22 So what's this case really about? At the end of the
23 day, what is it about? It's not about VOCs that are a problem.
24 It's not about VOCs that are a problem because they're all
25 below MCLs. What it's really about is something called

04:20PM

1 turnouts. You're going to say what the heck is a turnout?

2 Well, it has to do with the VOCs and perchlorate
3 that come out of Saugus 1 and Saugus 2, are then pumped to the
4 Saugus treatment plant. And then after the VOCs are --

04:20PM

5 Here, I'll find it.

6 Then after the -- yeah, I want to get to the right
7 spot.

8 All right. Your Honor, I got it back.

9 Okay. So it has to do with the distribution system.

04:21PM

10 Let me show you the way the distribution system works.

11 Okay. The VOCs, you see at the bottom that Saugus 1
12 and Saugus 2, the water is pumped. You saw the pumps. It's
13 then piped to the SPTP -- or SPTF where it's treated for
14 perchlorate, the one that Whittaker paid for. Once the

04:21PM

15 treatment for the perchlorate is finished, it's then piped out
16 of the SPTF, and then it's mixed or blended with water from the
17 State Water Project at Castaic Lake. That water has no VOCs in
18 it. It's pure. From there, it's pumped to the turnouts. And
19 from the turnouts, it's then sent to homes for drinking.

04:22PM

20 Now, this water is tested on multiple occasions.
21 The first -- the first place it's tested is as it comes out of
22 the well. The second place it's tested, when it leaves the
23 SPTF -- you can see the red dot -- before it's blended. And
24 the last place it's tested is at the turnouts.

04:22PM

25 And why is it important about the turnouts? Because

1 what the Department of Drinking Water wants and what they care
2 about is not the water that's coming out of the well. That's
3 DTSC, and DTSC says we have no problem. It's not the water at
4 the SPTF. What they care about is what are the VOCs in the
04:22PM 5 water that are distributed to people who are drinking it?

6 So if the water at the turnouts has no VOCs in it,
7 they're fine. If the blending works, they're fine and you get
8 a permit to use the water.

9 But -- and this is something that was confirmed by
04:23PM 10 Mr. Alvord who is the head of operations for the plaintiff.

11 (Videotape played, not reported.)

12 MR. BLUM: This is where Mr. Leserman, we saw
13 earlier, said 10 percent of the water coming to the turnouts
14 has VOCs.

04:24PM 15 So what does that mean? Where are those VOCs coming
16 from? Has the plaintiff investigated it? Have they sought to
17 determine it? Or they just assumed, because this is
18 litigation, that it's Whittaker?

19 (Videotape played, not reported.)

04:24PM 20 MR. BLUM: Now, the evidence is going to show that
21 they have done no investigation even though employees, the head
22 of their laboratory, has looked at results and said, wait a
23 minute, this can't come from Whittaker. The numbers are just
24 too high.

04:25PM 25 Remember, it goes from the SPTF. Then it's blended

1 with clean water. The rules of dilution are clear. The
2 concentrations at the turnouts can never be greater than the
3 concentrations of the SPTF because of the blending. Yet on at
4 least two occasions, that's what was found.

04:25PM

5 The plaintiff's reaction? Blame it on lab error,
6 even though you will hear testimony that there was no evidence
7 of lab error. Basically shut up, we don't want to hear. We
8 want to litigate, not investigate.

04:25PM

9 So -- but can they do it? This is the important
10 issue. Can they find out if, indeed, it's just Whittaker or
11 whether or not they have other contamination? What you see is
12 basically a blank, what's called theoretical blend calculation.
13 According to the permit, they've got to fill this out -- I

04:26PM

14 think it's every other week or every week. And in it, what
15 they look at is what were the chemicals coming from the SPTFs,
16 the VOCs, TCE, and PCE to be specific and perchlorate and what
17 was found at the turnouts. And they've been doing this for
18 over a decade.

04:26PM

19 So there's a lot of data here, but yet they've never
20 looked at this data. They've never looked at these, where
21 clearly the concentrations found at the turnouts were greater
22 than what was found at the SPTF.

23 (Videotape played, not reported.)

04:27PM

24 MR. BLUM: This is 2019, December. Haven't done it
25 yet. Consistent with don't do it because they might find out

1 Whittaker is at the source.

2 THE COURT: Please move to the microphone, and there
3 is some noise emanating from the computer.

4 MR. BLUM: What -- what the evidence is going to
04:28PM 5 show is that the -- if they had looked at the theoretical blend
6 calculations, because the one that we just saw discussed was
7 one that the head of operations had really never looked at.
8 And what he saw was that at the SPTF, it was non-detect for
9 PCE. That means they couldn't detect any, but yet they
04:28PM 10 detected it at the turnout.

11 And the head of operations who's responsible for the
12 operations of the facility had not known this, hadn't even
13 looked. And what he said, I don't know. And he further says,
14 I'm going to find out. He never did. So we did. We looked at
04:29PM 15 it.

16 Now, remember the assumption that the plaintiff
17 makes, that the only possible source of VOCs at the turnouts
18 could be Whittaker. That is an assumption built into
19 everything they've done here, going back to Lechler's reports,
04:29PM 20 looking at the turnouts. So the plaintiff has a calculation
21 and they -- and that's what they do to calculate. If Whittaker
22 is the only possible source, what should the contamination be?

23 So we went out and we hired our own statistician, a
24 Dr. Duane Steffey. And what Dr. Steffey did was he looked at
04:29PM 25 every piece of evidence we had -- or they had about the

1 numbers, those theoretical blend calculations, over a decade,
2 and looked at the plaintiff's prediction as to what the
3 concentration should be if Whittaker is the only source.

04:30PM 4 And if you can see, to make this easier, for two --
5 this is just two of the turnouts. The red line, that's what --
6 that's what the plaintiff's prediction was what the
7 concentration should be. But when you actually look at the
8 real numbers, you'll find time after time that the
9 concentrations of the -- in this case, I think it was PCE --
04:30PM 10 were much greater than what was predicted.

11 Assuming that plaintiff didn't just make up their
12 calculation -- and when they tell you it's accurate, the only
13 reasonable assumption to draw is that there is a source of
14 VOCs, particularly TCE and PCE, that is entering their system
04:31PM 15 that they just don't want to find.

16 Now, what's the evidence that there is? We know the
17 only time they actually did an investigation was in 2012
18 because they were forced to. What was the result of that
19 investigation? The PCE found didn't come from Whittaker. It
04:31PM 20 came from somebody else. Did they then follow up and say,
21 well, if this contamination can come from somebody else, how
22 about other contamination? No.

23 When the head of their lab on two occasions in 2015
24 and 2016 said, hey, the numbers are too high for it to come
04:31PM 25 from Whittaker, did they investigate? No. When Mr. Alvord was

1 shown the proof himself where the detections at the turnouts
2 were greater than at the -- at the plant and he said --
3 admitted, I don't know what the source is, did they do the
4 investigation? No. Because it all comes back to what
04:32PM 5 Mr. Leserman said about why they didn't do the follow-up
6 investigation. After meeting with their attorneys, they
7 thought it was a better idea to litigate, and that's what
8 you're -- that's what we're going to be able to prove.

9 Look, in the end, the case is about responsibility.

04:32PM 10 We're responsible for the perchlorate. We accept the
11 responsibility, and we will pay for the reasonable cost to
12 treat the perchlorate at V-205. We're not responsible for the
13 VOCs. And when you -- despite plaintiff's protestations and
14 their failure to investigate, to do a truthful investigation,
04:32PM 15 we're here because they want us to pay for something that we
16 didn't do.

17 I thank you, and I hope you have a good evening.

18 THE COURT: Ladies and gentlemen, we will conclude
19 for the day, and you are ordered back here tomorrow at 8:30.

04:32PM 20 Please make sure that you appear here on time. My intention is
21 to start up at 8:30 sharp.

22 Please remember, don't speak to anyone about the
23 case, the people, or the subject matter involved. Keep an open
24 mind.

04:33PM 25 And you can leave your notebooks -- actually, why

1 don't you -- Mr. Cruz will tell you what to do with your
2 notebooks. But for those of you in the audience, you certainly
3 should take your notebooks with you back into the jury
4 assembly -- the jury deliberation room.

04:33PM

5 Have a good evening. We'll see you tomorrow at
6 8:30. Thank you.

7 THE COURTROOM DEPUTY: All rise for the jury,
8 please.

9 (Out of the presence of the jury:)

04:33PM

10 THE COURT: Please be seated.

11 We are outside the presence of the jury.

12 The parties are ordered back here tomorrow at

13 8:00 o'clock sharp. I don't know that there's going to be
14 another long line tomorrow. I don't think so, but please do

04:34PM

15 plan ahead. I understand that you were all caught out there
16 waiting in the long line today. You don't have to expect that
17 you will have something similar, but do please make sure that
18 you're here so that we can start at 8:00 o'clock.

19 My intention is to address with you some of the
04:34PM 20 challenged exhibits. I now have looked at some of the
21 challenged exhibits.

22 And to return to an issue you raised, Mr. Blum,
23 which we'll discuss in a little more detail tomorrow, unless
24 the Court specifically says this is coming in, this is not
04:34PM 25 coming in definitively. You will have to make objections on

1 the record. The reason is that -- that is, you'll have to make
2 an objection contemporaneously.

3 The reason is, as I look at some of the documents
4 and the parties' positions on them, it is not entirely clear to
04:35PM 5 me whether the objections are necessarily meritorious, and that
6 may depend upon whether an adequate foundation, for example, is
7 set. Sometimes there's an objection on hearsay grounds, for
8 example, a settlement agreement. I'm not going to be able to
9 make that determination. Normally that's -- as the parties

04:35PM 10 well know, that's not hearsay. I don't know what purpose it's
11 being offered for, so maybe there is some type of hearsay
12 purpose for it.

13 So the bottom line is that I will give you as much
14 guidance as I can, but the parties should not just be flashing
04:35PM 15 up documents and exhibits without making sure they have
16 established an appropriate foundation because, even if I give
17 you guidance but you haven't yet checked off all the boxes
18 necessary, typically foundation, the Court is going to sustain
19 the objection. And if you publish it, you'll be admonished for
04:36PM 20 publishing it without making sure you established foundation.

21 More tomorrow at 8:00 o'clock. We'll see you then.

22 (Proceedings adjourned at 4:36 p.m.)

23

24

25

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